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THE LEGAL MEANING OF THE PACT FOR THE RENUNCIATION OF WAR

MIROSLAS GONSIOROWSKI

Author of "Société des Nations et Problème de la Paix"

Few treaties have been the object of such different and contradictory constructions as the Pact for the Renunciation of War. For some writers, the Pact constitutes a mere gesture and has only a moral value. For others, it condemns any act of force whatever and imposes upon the contracting parties a positive obligation to settle all disputes by pacific means. There are still others who take a stand between these two extreme views, but they are far from reaching an agreement as to the exact meaning of the Pact. Such a divergence of opinion is largely due to the fact that this treaty has been generally contemplated from a political rather than from a legal point of view. While the opponents of the Pact have endeavored to minimize its importance, the supporters have been at pains to enlarge its scope by means of an extensive interpretation. Instead of attempting to examine carefully the legal issues involved and to arrive at a conclusion as a result of an objective investigation, both camps have striven to find arguments likely to support their preconceived opinions. Owing to the personal authority of certain writers who have taken a part in this discussion, some arguments which they have advanced have made considerable impression and have been adopted uncritically by a large body of opinion, although they lack any legal foundation. Now, it is necessary to realize that in order to make clear the meaning of the Pact, this treaty, being a legal document, must be construed on a strictly legal basis.[1]

[1] The numerous questions raised by the Pact cannot be dealt with exhaustively in an article. The purpose of the present discussion is to examine as concisely as possible some of the most important problems which deserve particular attention.

I. THE VALUE OF PREPARATORY WORK

The notes exchanged between the United States and the other interested powers constitute a so-called preparatory work, and are of importance for the interpretation of the Pact. When several states want to regulate certain matters, they enter into negotiations with a view to concluding a treaty. In the course of the exchange of views, divergent opinions are expressed by the states concerned, but the latter must realize that if they were not prepared to change their views which conflict with those of the others, no agreement can be reached. The purpose of the negotiations is precisely to work out a solution acceptable to all parties. This solution is embodied in a treaty which registers the common intention of the signatories and determines their rights and duties. As a final text which has been agreed upon and duly signed and ratified, the treaty is naturally presumed to express truly this common intention. However, it may happen that the wording of a provision does not register clearly the real design of the parties as evidenced in a unanimous declaration. In such a case, the provision in question must be construed strictly in accordance with this declaration. Recourse to preparatory work helps to understand the intention of the signatory states and to make clear the provisions of the treaty. But the interpreter must continually bear in mind that the treaty constitutes an organic whole which has its own existence, and that it is presumed to mean what it says. Any evidence adduced from preparatory work must be used with the utmost caution. Since the treaty is unanimously agreed upon by the parties, in the event of a doubt as to the exact meaning of a provision one must have recourse to preparatory work in order to ascertain what this provision is intended to mean by *all* parties. Only in exceptional cases may a unilateral declaration made in the course of the negotiations throw light upon an obscure provision, and it goes without saying that it can never prevail over the text of the treaty.[2]

[2] In contradistinction to the English system, the Continental system recognizes the principle according to which the court is at liberty to examine parliamentary debates, reports of commissions, and other preliminary documents pertaining to a statute which it is called upon to interpret. But even in the countries which have adopted this system it is strongly recommended not to stress too much the importance of preparatory work, especially that of individual opinions voiced during the making of the statute by its authors. Examining the case of a law which is not sufficiently clear, one of the most authoritative writers says: "La première chose à faire, pour lever de doute, est de consulter les travaux préparatoires de la loi

It should be added that in fact the importance of preparatory work is different in the case of a bilateral treaty and in the case of a multilateral treaty. When the negotiations are limited to two states, it is much easier to discover the common intention of the contracting parties than in the event of several powers being involved in the discussion. In the former case, two similar declarations made by the representatives of the states concerned should be regarded as giving the exact interpretation of the treaty. In the latter case, however, it may be very difficult to ascertain whether a particular statement has or has not been approved by all the contracting parties. Therefore, the practical importance of preparatory work is here somewhat limited.

The Permanent Court of International Justice has been most reluctant to draw inferences from preparatory work, and has been inclined to base its decisions exclusively upon the texts of treaties. If, in certain cases, it has examined extraneous evidence, it was in order to show that this evidence confirmed the conclusions already reached through a study of the text. The Court has laid down the rule that "there is no occasion to have regard to preparatory work if the text of a convention is sufficiently clear in itself."[3] It follows that in case this condition is fulfilled, the Court will decide only upon the text, even if the preparatory work revealed a common intention of the parties contrary to this text.[4] And it must be ob-

(discussions des Chambres, rapports, exposés des motifs, etc.). Là se trouve souvent la pensée, qui a guidé le législateur. Cependant cés documents n'ont pas toujours l'autorité qu'on leur prête. D'abord l'orateur, l'auteur du rapport, etc., a pu se tromper. . . . Ensuite les discussions, surtout dans une assemblée un peu nombreuse, reflètent souvent des opinions individuelles, en contradiction avec la pensée vraie de la loi. Aussi estce une rémarque souvent faite que les travaux préparatoires fournissent des armes à tous les partis et que les diverses opinions en présence y trouvent des arguments qui s'annulent réciproquement." Planiol, *Traitè élémentaire de droit civil* (7th ed.), Vol. 1, sec. 218. Similarly, Dalloz writes: "L'exposé des motifs, sa discussion publique, d'une manière générale, les travaux préparatoires de la loi peuvent être d'un grand secours pour l'interprétation de la pensèe du législateur. Mais les opinions individuelles émises à la tribune ne sauraient prévaloir contre le texte." *Répertoire pratique.* Lois, No. 567.

[3] This is a rule of interpretation which the Court has applied in many instances, such as the Lotus case (Series A, No. 10, p. 16), the case of the competence of the International Labor Organization (Series B, Nos. 2 and 3, p. 41), the case of the jurisdiction of the European Commission of the Danube (Series B, No. 14, p. 28), and the case of the interpretation of the Statute of the Memel Territory (Series A/B, No. 47, p. 249).

[4] The opinion according to which the Court has never stated that preparatory work might not be used to contradict the linguistic clearness of the text (Hyde,

served that the expression "sufficiently clear" is understood by the Court in a broad manner. Thus in the case of the competence of the International Labor Organization the Court discarded the preparatory work and decided on the face of the text that this competence extended to agriculture, although the natural meaning of the French term "*industrie*" does not convey such an idea. Another striking instance is the Nationality Decrees case. In this case, the Court was requested to interpret Article 15, sec. 8, of the Covenant of the League of Nations. There is a certain difference between the English text, which speaks of a matter "solely within the domestic jurisdiction," and the French text, which uses the expression "*compétence exclusive.*" Moreover—and this is particularly important—it must be recalled that the provision in question, inserted in the Covenant on the proposal of the American delegation, was intended to withhold from the jurisdiction of the Council certain matters which by their *nature* were regarded as purely internal affairs of each state, such as tariffs, immigration, and nationality. The Court, however, did not enter into an examination of the preparatory work and substituted for this material criterion a formal one. It decided that the provision of Article 15, sec. 8, contemplates certain matters which are not, in principle, regulated by international law.[5] It follows *a contrario* that any internal affair may fall outside the scope of this provision. And in the case before it the Court held that because of the existence of certain international obligations France could not avail herself of the provision in question, although, in its opinion, questions of nationality were, in principle, solely within the domestic jurisdiction of each state. There is certainly a discrepancy between the intention of the parties and the conclusion reached by the Court on a study of the text of the Covenant. The president of the Court, Dr. Max Huber, has frankly confessed that the interpretation according to which paragraph 8 of Article 15 contemplates internal questions (*questions intérieures*) is supported by the opinion of the authors of the Covenant, but that such an interpretation "is quite contrary to its spirit and is not in any way required by the text."[6] In other words,

"Judge Anzilotti on the Interpretation of Treaties," *American Journal of International Law*, 1933, p. 504) appears to be at variance with the Court's statement that has just been quoted.

[5] Series B, No. 4, pp. 21–24.

[6] *Annuaire de l'Institut de droit international*, 1931, p. 81.

the Court considered that the spirit of the treaty should prevail over the intention of the parties revealed during the negotiations.

One may wonder why the Court has not followed the uniform practice of arbitral tribunals, which had attached much importance to preparatory work. It would seem that the main reason is that, unlike arbitral tribunals, which, as a rule, have been called upon to settle disputes between two states on the basis of special agreements and other bilateral treaties, the Court has had to deal with multilateral treaties many of which were drawn up in peculiar conditions and were open to accession by non-signatories. Such a state of affairs naturally gives rise to great difficulties and makes it incumbent upon the Court to act with particular caution. In the first place, the greater the number of parties, the greater the difficulties of inferring their common design from a mass of extraneous material. In the second place, many provisions of the most important treaties concluded at the end of the World War were drawn up by special commissions on which only part of the signatories were represented. It would not help very much to discover the intention of the authors, since this intention could not be regarded as identical with that of all parties. Finally, certain treaties were open to accession. The states which acceded did so on the basis of the terms expressed and could not be held bound by what extraneous evidence might disclose as being the intention of the original signatories. Under such circumstances, one may conclude that although in certain cases the Court perhaps has gone a little too far in its reluctance to examine preparatory work, the stand it has taken is, in principle, perfectly just.

It has been contended that the individual declarations made during the negotiations which resulted in the conclusion of the Pact of Paris "constitute as inherent and essential a part of the treaty obligations as if they had been written into Article 1 of the Pact.[7] This is an extraordinary proposition. How could it reason-

[7] Borchard, "The Multilateral Treaty for the Renunciation of War," *American Journal of International Law*, 1929, p. 117. Similarly, Miller, *The Peace Pact of Paris* (New York, 1928), pp. 95, 117, 119; Morris, "The Pact of Paris for the Renunciation of War," *Proceedings of the American Society of International Law*, 1929, p. 90; Gall, *Le pacte de Paris du 27 août 1928* (Paris, 1930), p. 82. Certain writers go still further and argue that even the Senate report is an essential part of the treaty. Morris, *op. cit.*, p. 90. They pay little heed to the terms of the report itself, which states that "this report is made solely for the purpose of putting upon record what your Committee understands to be the true interpretation of the treaty, and not in any sense for the purpose or with the design of modifying or changing the treaty in any

ably be admitted that everything that the parties might state in their unilateral declarations has absolutely the same legal effect as the text agreed upon by all of them? Why should the signatory states be bound as much by the treaty that they have ratified as, for instance, by the French draft of April 20, 1928,[8] which, as is properly pointed out,[9] constitutes an embodiment in the form of a treaty of the points previously raised by France? And it must be added that Article 1 of this draft, modelled on Article 2 of the Locarno Rhine Pact, goes far beyond the scope of the Pact of Paris. As regards the British declaration concerning certain regions, there is absolutely nothing in all the extraneous material that could be interpreted as its acceptance by the other states. Several countries, such as France, the Soviet Union, Egypt, Persia, and Afghanistan, clearly expressed their opposition to the British doctrine. Mr. Kellogg himself declared before the Committee on Foreign Relations that he did not acquiesce in the relevant British declaration.[10] This does not prevent, however, certain writers from asserting that the British doctrine was accepted simply because of its not having been expressly rejected, and that it constitutes a

way or effectuating a reservation or reservations to the same." *Congressional Record*, January 15, 1929 (Vol. 70, No. 29, p. 1783 *seq.*). If the opinion of Mr. Morris were right, it would be logical to apply it to the parliamentary reports made in all countries which have ratified the Pact of Paris—for instance, to the report submitted to the French Chamber of Deputies by M. Cot on behalf of the Foreign Relations Commission. Now, this report states emphatically that the parties to the Pact are bound exclusively by its text and in no way by any declarations made in the course of the negotiations. *Chambre des Députés*, Session de 1929, No. 1288, p. 17. Since, it is alleged, such a statement constitutes as inherent a part of the treaty as the declarations the binding force of which it denies, how possibly could this contradiction be solved? There are many other contradictions, and this even between parliamentary reports made in one and the same country. As regards France, for instance, M. Cot contends in his report submitted to the Chamber of Deputies that Article 2 of the Pact of Paris provides for compulsory arbitration without any reservation. *Op. cit.*, p. 20. On the contrary, Senator Labrousse, the *rapporteur* of the Foreign Relations Commission of the Senate, emphatically denies it and states that the parties have not entered into any positive obligation to settle their disputes by pacific means. *Sénat*, Année 1929, Session ordinaire, No. 182, p. 15. If such statements were really supposed to form a part of the treaty, no international agreement could be properly construed.

[8] *The General Pact for the Renunciation of War*. United States Government Printing Office (Washington, 1928), p. 21 *seq.*

[9] Miller, *op. cit.*, p. 57.

[10] *Hearings before the Committee on Foreign Relations*, United States Senate, Seventieth Congress, December 7 and 11, 1928, p. 8. The Secretary of State emphasized that Great Britain "would have no greater right under her notes than she would have under this treaty without the notes." *Op. cit.*, p. 12.

part of the Pact of Paris.[11] Such an assertion is purely gratuitous. During the negotiations various statements are made before an agreement is reached, and obviously there is not, and cannot be, any presumption to the effect that, unless formally rejected, they are all tacitly accepted. In accordance with a fundamental rule of interpretation, it should be pointed out that the burden of proof rests upon those who consider that the declaration in question is legally binding and so qualifies the treaty. No such demonstration, however, has been made, nor, it is submitted, can be made.[12]

The notes exchanged between the states concerned throw light upon the Pact of Paris and help to understand its meaning. Among them, the American covering note of June 23, 1928,[13] is the most important. It accompanied the final draft treaty and was intended to explain its terms. Some governments formally agreed to these explanations, others simply acknowledged receipt of the note. It is very interesting to observe that these governments did not confine themselves to expressing such agreement or to acknowledging such receipt, but that almost all of them thought it necessary to raise certain points and to state their own opinions. The latter, however, are not always identical with those of Mr. Kellogg. As regards, for instance, two questions which played a very important rôle in the Franco-American negotiations, i.e., the relations of the Pact to the Covenant of the League of Nations and to the Locarno agreements, the Secretary of State does not confine himself to declaring in his note that there is no inconsistency between the Pact and these treaties, but goes further and attempts to construe the latter. His construction, however, is not correct.[14] Does France

[11] Miller, *op. cit.*, p. 117; Borchard, *op. cit.*, p. 117.

[12] Considerations of space do not allow examination of the meaning of the so-called British regional doctrine. It may be observed that this doctrine, formulated in ambiguous terms, is susceptible of different interpretations. But one cannot tell with certainty whether it is or is not contrary to the Pact of Paris. The doctrine may very well have merely a political character and be intended to make it clear that Great Britain is determined to defend certain regions by all measures which are consistent with the Pact. Did the British government intend to reserve to itself legally its freedom to take other measures, it could have done so by making a formal reservation to this effect in its instrument of ratification. But this instrument is unconditional.

[13] *The General Pact for the Renunciation of War* (Washington, 1928), p. 36.

[14] Dealing with the Covenant, the note refers to Article 10 and quotes an interpretative resolution of the Assembly of the League under which "it is for the constitutional authorities of each member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by employ-

accept it? The French note of July 14, 1928, is drawn up very carefully. It starts with a general declaration that the French government is happy "to take note of the interpretations which the government of the United States gives to the new treaty," but adds immediately that "these interpretations may be summarized as follows." The French government summarizes them in such a manner that it repeats its own previous declarations and states

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ment of its military forces." On the basis of this resolution, the note concludes that "the Covenant can, it is true, be construed as authorizing war in certain circumstances, but it is an authorization and not a positive requirement." First of all, it must be pointed out that the note takes into consideration only a part of the resolution submitted to the Assembly, although, according to a principle of interpretation, *incivile est, nisi tota lege perspecta, una aliqua particula eius proposita judicare, vel respondere.* Furthermore, it fails to realize its purpose. The resolution in question is the result of a long discussion initiated by the Canadian delegation during the first session of the Assembly. Its only purpose is to settle the question as to *who* has the right to take the final decision as to the application of military sanctions against an aggressor, and not *whether* there is or is not an obligation to apply such measures. The resolution adopts the point of view of the Canadian delegation and states that the decision in question rests, not with the Council, but with each state. However, although it is limited to this particular aspect of the problem, the resolution cannot help admitting that Article 10 does impose an obligation upon the members of the League to resort to arms in certain circumstances. This is implied even in the passage which is quoted in the American note, and which constitutes paragraph 2 of the resolution. In fact, according to its terms, each state shall decide when it is "*bound* to assure the execution of this obligation by employment of its military forces." Moreover, under paragraph 3, the recommendation made by the Council as to the application of military sanctions "shall be taken into consideration of all the members of the League with the desire *to execute their engagements in good faith.*" The Council has not the right to impose its decision upon the members, and the latter must decide for themselves in good faith when the execution of their obligations under Article 10 requires the application of military measures. But if they reach the conclusion that such is the case, they are legally bound to resort to arms. This is a positive requirement and not a mere authorization.

As to the Locarno agreements, the note says: "If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder." However, such obligation does attach and is not contingent in certain cases upon a resort to war by one of the parties. According to Article 4, sec. 3, of the Locarno Rhine Pact, in the event of a flagrant breach of Article 42 or 43 of the Treaty of Versailles by one of the parties, the signatory powers are bound to lend at once their assistance to the other interested party, although the treaty-breaking state has neither resorted to war nor even crossed the frontier, but when simply such a breach is regarded as an unprovoked act of aggression and when, by reason of the assembly of armed forces in the demilitarized zone, immediate action is necessary. Being unable to dwell any longer upon this matter, it may be added that it is dealt with at length by the present writer in his book, *Société des Nations et problème de la paix* (Paris, 1927), Vol. 2, Chap. 14, espec. pp. 496–510.

simply that "none of the provisions of the new treaty is in opposition to the provisions of the Covenant of the League of Nations nor to those of the Locarno treaties." It again stresses this point a little further on, and concludes that "in this situation and under these conditions" it is prepared to sign the Pact. Apart from certain particular questions, however, the American covering note may be regarded as correctly expressing the views of all the original signatories. It places a sound construction upon the Pact of Paris and contains nothing that would qualify this treaty in any respect. The Secretary of State declared before the Committee on Foreign Relations that he had not intended to make any reservation and that every statement made in the note "would be accepted as an accurate construction of the treaty, if there never had been a note written at all."[15] Nevertheless, certain writers maintain that the note is intended to make reservations. Its author, however, is apparently best qualified to know what his intention was.

The question has been asked why all these laborious negotiations were necessary if the Pact really means what it says. An explanation can be given easily. The main principle underlying the entire system of European security, based upon the Covenant of the League of Nations and other international agreements concluded within the framework of this treaty, is that in the event of an aggression the interested states are bound to lend their assistance to the attacked country. An unconditional renunciation of the institution of war would impair this obligation. Since the American proposal of a world-wide anti-war treaty was supported by certain influential circles which (such as the outlawry of war movement) were opposed to the League of Nations, and to the idea of sanctions in particular, public opinion in Europe feared that this proposal tended to undermine the League and to replace the Covenant by

[15] *Hearings before the Committee on Foreign Relations, op. cit.*, p. 5. Speaking of all the diplomatic correspondence, Mr. Kellogg said: "There is absolutely nothing in the notes of the various governments which would change this treaty if the treaty had been laid on the table and signed as it is, without any discussion." *Op. cit.*, p. 4. He added: "These questions, with the suggestions made about Locarno and the right of self-defense, and these other matters, were answered by me in our notes, and the treaty would have the same effect whether these notes had been exchanged or not." And he concluded: "It is true . . . that if there is anything in the correspondence or negotiations contrary to the terms of the treaty, the treaty is the one that settles it. That is the contract which finally defines the rights of the parties." *Op. cit.*, pp. 8, 10. Similar opinions were expressed by Senator Borah, the *rapporteur* of the Foreign Relations Committee. See *Congressional Record*, Jan., 1929, p. 1126.

a bare declaration against war.[16] These apprehensions were voiced in official quarters even after the negotiations had been concluded and the Pact signed.[17] The governments, therefore, felt it necessary to make it absolutely clear, in order to remove any misunderstanding, that the Pact could not infringe upon, or conflict with, their international obligations concerning the enforcement of peace.

II. THE RIGHT OF SELF-DEFENSE

The right of self-defense has been discussed widely in connection with the Pact of Paris, and has given rise to different interpretations. Emphasis has been placed upon its political aspect, with the result that the legal issues involved have been lost sight of. Starting from the assumption that this right is not defined by international law, many writers have concluded that the contracting parties may interpret it as they wish and, consequently, are unrestricted by the Pact. But the non-existence of such a definition hardly justifies this conclusion. International conventions and international custom are not the only sources of international law. There are also, according to Article 38, sec. 3, of the Statute of the Permanent Court of International Justice, "the general principles of law recognized by civilized nations." Now, as has already been demonstrated by many writers, these principles are those which the states have recognized in their municipal law. Moreover, it has also been demonstrated that the provision of Article 38, sec. 3, does not lay down a new rule which is applicable only in the mutual relations between the signatories of the Statute, but simply formulates an existing rule, as it is evidenced by a uniform practice of arbitral tribunals. If, therefore, international conventions and international custom prove to be insufficient in a given case, recourse must be had to the general principles prevailing in the main systems of municipal law.[18]

[16] See, for instance, Glasgow, "Foreign Affairs," *Contemporary Review*, 1928, p. 248; Scelle, *Le pacte Kellogg; la paix par le droit* (1928), p. 433; De Montluc, "Le Pacte Briand-Kellogg," *Revue de Droit International* (Geneva), 1928, p. 334; Balbareu, *Le pacte de Paris* (Paris, 1929), p. 30.

[17] Several speakers raised this question in the French Parliament during the discussion on the ratification of the Pact. In order to reassure its opponents, M. Briand declared emphatically in his speech delivered before the Senate on March 29, 1929, that the Pact could not in any way be substituted for the Covenant. M. Cot made a similar statement in his report. *Op. cit.*, p. 33 *seq.*

[18] See, for instance, Verdross, *Die Verfassung der Völkerrechtsgemeinschaft* (Wien, 1926), p. 57 *seq.*, Lauterpacht, *Private Law Sources and Analogies of Inter-*

It is very interesting to observe that not only international law, but even municipal law of most civilized countries, does not contain any definition of the right of self-defense and confines itself to laying down certain rules concerning this right.[19] According to well-established principles, the state of self-defense is determined by the concurrence of the following three conditions: (1) defense of himself or of another person; (2) present necessity of such defense; (3) unprovoked aggression.[20] The state of self-defense implies the idea of a violent attack. This does not mean, however, that in the event of a threatening attack it is necessary to wait until violence begins, inasmuch as the first blow may make it impossible for the victim to defend himself. It is sufficient that this attack be of such a nature as to create a danger. Furthermore, the right of self-defense is based upon the necessity of providing immediately for one's own defense. If the attacked person waited until the arrival of the police, he would run great peril and might risk his life. But this person is not entirely free in the choice of the measures to be taken. They must be proportionate to the threatening danger. In case it is obvious that the aggression can be repelled easily, or that it does not constitute any real danger to life, manslaughter is forbidden. Such a measure may be taken only in extreme cases in which all other measures appear insufficient. Finally, the person who invokes the right of self-defense must not be guilty of any provocation. It is for each interested person to decide in a particular case whether he is or is not entitled to resort to force in virtue of this right. The recognition of the latter by municipal law does not mean that every one is free to use force provided he simply takes care to invoke the state of self-defense. It is necessary to prove that the right in question was really at stake in order to escape from responsibilities. Moreover, since the general rule is the condemnation of any act of force in domestic relations, and the

national Law (London, 1927), p. 69; Ascher, *Wesen und Grenzen der internationalen Schiedsgerichtsbarkeit und Gerichtsbarkeit* (Leipzig, 1929), p. 26 *seq.*, Strupp, *Das Recht des internationalen Richters nach Billigkeit zu entscheiden* (Leipzig, 1930), p. 113 *seq.* After a thorough investigation into the question, the Institute of International Law reached conclusions consonant with those which are expressed above. See its *Annuaire*, 1932, *passim*.

[19] The French Penal Code, for instance, deals with this matter in Articles 328 and 329. The former, without attempting to give any definition, provides simply that there is no crime when manslaughter is committed in self-defense. The latter cites, as an example, two cases in which the state of self-defense occurs.

[20] Dalloz, *Dictionnaire pratique de droit* (8th ed., Paris), p. 1278, sec. 7 *seq.*

right of self-defense constitutes merely an exception thereto, the interpretation to be placed upon such an exception must be a restrictive one.

The above principles apply *mutatis mutandis* in international relations. The question of self-defense was not very important in the past when, apart from certain particular agreements, the states were free to resort to arms. If the parties engaged in hostilities pretended to fight in self-defense, although in reality they were aggressors, the distinction that they made between a defensive war and an aggressive war was, above all, a political one. The governments wanted to discharge themselves from the moral responsibility which they incurred; but from the legal point of view they had, in principle, the right to wage either a defensive or an aggressive war.

The situation is entirely different now. The legal aspect of the problem in question has become particularly important since the limitation of the right of the states to go to war by the Covenant of the League of Nations, and especially since the renunciation of war as an instrument of national policy under the Pact of Paris. Both these treaties contain no reference to the right of self-defense, and it must be admitted that they leave it implicitly unimpaired. This right, indeed, is of such importance that it could be renounced only in virtue of an express provision to this effect which is not to be found in either of them. The right in question may be defined, in general terms, as the right to resort to force in order to repel an actual or immediately threatening violent attack. First of all, there must be a violent attack. If the rights and interests of a state or of its nationals are injured by certain measures undertaken by a foreign government, but these measures are unaccompanied by a recourse to force, the right of self-defense is not applicable, and consequently the parties to the Pact of Paris are prohibited from resorting to war, although of course they may take other measures which are consistent with this treaty. Stress must be laid on the fact that any violation of its obligations by a government does not necessarily create the state of self-defense. This state depends upon the very nature of the measures which have been taken and upon the danger threatening the other party. But the idea of a violent attack does not mean that the right of self-defense may be exercised only in the event of an actual attack.[21] Were resort to war regarded

[21] M. Cot does not make a correct statement when he says in his report that

as a necessary condition, this right would be useless, because under the preamble the parties would be already released from their obligations to the treaty-breaking state. If, however, without resorting to war and thus without violating the Pact, one of the signatories has recourse to other measures of coercion, these measures may nevertheless give rise to the exercise of the right of self-defense. In the second place, even if such measures are not resorted to, but it is nevertheless obvious that a state is preparing for war and that an immediate attack is threatening, it seems difficult to deny the other party the right to provide for its own defense. The measures to be taken depend upon the danger which is imminent, and they must be proportionate to its seriousness. A recourse to war may take place only in case the other measures prove insufficient. Moreover, there must be present necessity of defense.[22] Finally, the attack should be unprovoked.

Just as each individual, acting in self-defense, must decide for himself whether he is entitled to go so far as to kill his aggressor, each state "alone is competent to decide whether circumstances require recourse to war in self-defense."[23] Obviously, this does not mean at all that, as has been contended, a state may always go to war regardless of the Pact of Paris and all it will have to do will be simply to claim that the war is one of self-defense. The rôle of a state, exactly like that of an individual, is merely to decide whether the right in question, *as it stands*, does apply under the specific cir-

"self-defense implies a formal violation of the Pact of Paris." *Op. cit.*, p. 38. His opinion is all the less justified since he believes that Article 2 of the Pact provides for compulsory arbitration and that, accordingly, a state which refuses to submit a dispute to an arbitral tribunal violates this treaty. But it is obvious that if it confines itself to such a refusal there is no question of self-defense in so far as the other party is concerned.

[22] It is very interesting to observe that this essential condition would not be fulfilled, and, consequently, the right of self-defense would *ipso facto* disappear, if the states could rely upon the international community to defend them and to redress their wrongs. In point of fact, while the right of self-defense is indispensable in domestic relations, it has not necessarily this character in international relations. An attacked person defends his life and cannot wait until the police arrive, without the risk of being killed. A state, however, does not run such a risk. It is true that its independence and integrity may be compared to the life of an individual, but, unlike this life, they can be restored and they would be restored by the international community. The disappearance of the right of self-defense would greatly facilitate the task of ascertaining which of the parties engaged in hostilities has resorted to war in violation of its obligations.

[23] This last sentence is taken from the American note of June 23, 1928. It expresses a sound idea, but by many a writer has not been properly understood.

cumstances of each case, but not to change arbitrarily its meaning and freely decide as to its extent. If every state were absolutely free to interpret its rights and obligations as it wished, international law would disappear. There are many cases similar to that which is being discussed. When a state enters into a treaty of defensive alliance and undertakes to lend its assistance to the other party in the event of an unprovoked aggression, it is bound to resort to arms in case all the conditions provided for in this treaty are fulfilled, although it alone remains judge as to the *casus foederis*. The state in question might refuse to intervene in such a case, pretending, for instance, that the aggression was not unprovoked; but in so doing it violates its obligations, and it does not matter what is the pretext invoked. Similarly, under the Covenant of the League of Nations each state alone is competent to decide when the execution of its obligations requires the application of sanctions. But it cannot, without violating the Covenant, stay idle when it is bound to take measures of coercion. The parties to the Pact of Paris must decide in good faith what they are legally *obliged* to do or not to do in certain circumstances. This is exactly what Mr. Kellogg says in the above-quoted sentence of his note. He emphasizes it in the sentence which immediately follows and which apparently has escaped the notice of many writers: "If it [the state] has a good case, the world would applaud and not condemn its action." This "good case" can mean only that the state does really act in self-defense.

It is true that if the states are competent to decide what they are obliged to do, in practice some of them may violate their obligations. But does not this apply to every treaty? The best remedy would undoubtedly be to endow the international community with the power to supervise the execution of treaties and to compel the parties to live up to their engagements.[24] Even at the present mo-

[24] Oddly enough, the idea of international sanctions encounters the strongest opposition among some of those who consider that the Pact of Paris does not impose any obligation upon the signatories to refrain from war and constitutes a mere gesture for the simple reason that the decision as to the application of the right of self-defense rests with each state. Such an attitude reveals a strange contradiction. In fact, it is contended, on the one hand, that sanctions are superfluous because the parties will carry out their obligations in good faith; but, on the other hand, it is implied that if each state remains judge as to the execution of its solemn pledges, it will certainly violate them. It may be added that the real importance of sanctions lies not in the punishment of the treaty-breaking state, as is generally believed, but in the prevention of a breach. This question is discussed broadly in the report, "The Legal and Political Aspects of Boycotts," made at the request of the Butler Committee on Economic Sanctions by Professor John B. Whitton and the present

ment, there is a certain supervision. When a treaty of compulsory arbitration has been entered into, an international tribunal may be called upon to decide whether the party which went to war was really in the state of self-defense. But the greatest progress has been achieved owing to the existence of the League of Nations. In the Sino-Japanese conflict, the Council set up a special committee and instructed it to inquire on the spot into the circumstances of the dispute. This committee, presided over by Lord Lytton, arrived at the conclusion that "the military measures of the Japanese troops during this night [September 18–19, 1931] . . . cannot be regarded as measures of legitimate self-defense."[25] The Assembly of the League of Nations pronounced its judgment in the report adopted unanimously, except for the vote of Japan, on February 24, 1933, in accordance with Article 15, sec. 4, of the Covenant. It stated: "The Assembly cannot regard as measures of self-defense the military operations carried out on that night by the Japanese troops at Mukden and other places in Manchuria. Nor can the military measures of Japan as a whole, developed in the course of the dispute, be regarded as measures of self-defense."[26] This important statement, which almost all of the parties to the Pact of Paris expressly approved, obviously disposes of the opinion of those who contend that "in view of the fact that the treaty apparently leaves each country contemplating or exercising measures of force the judge of what is "self-defense," who could assert that any signatory, going to war under circumstances which it claims require "self-defense," is violating the Pact?"[27]

III. WAR AS AN INSTRUMENT OF NATIONAL POLICY

Article 1 of the Pact of Paris lays down two principles: (1) the contracting parties "solemnly declare in the names of their re-

writer. The report is printed in the book, *Boycotts and Peace*, edited by Evans Clark (New York, 1932), pp. 47–142.

[25] League of Nations Publications, VII. Political, 1932. VII, 12, p. 71.

[26] League of Nations. Official Journal, Special Supplement, 1933, No. 112, p. 72. Similarly, in the dispute between Italy and Ethiopia the Italian government repeatedly contended that recourse to arms constituted a measure of self-defense and was necessitated by Ethiopia's mobilization which threatened the security of Eritrea and Somaliland. The League of Nations, however, did not concur in this view. On October 7, 1935, the Council stated that in resorting to arms Italy had violated her international obligations—that is to say, both the Covenant and the Pact of Paris—and so it implicitly declared that in this case the right of self-defense was not applicable.

[27] Borchard, *op. cit.*, p. 117.

spective peoples that they condemn recourse to war for the solution of international controversies, and (2) the contracting parties "renounce it as an instrument of national policy in their relations with one another." The first principle is not limited to the mutual relations of the signatories, and has the character of a general declaration condemning war. Under such a declaration, the parties are not legally bound to refrain from war against a non-signatory, as was made clear during the negotiations which led up to the conclusion of the Pact of Paris. The second principle imposes upon the parties a legal obligation to renounce war only in their mutual relations. A signatory which resorts to war against another signatory violates this obligation and becomes guilty of a breach of the Pact. In declaring war upon a non-signatory, this state does not violate any legal obligation but merely does not comply with the general anti-war declaration. In both cases, however, the other contracting parties are released from their obligations to the state in question, because according to a formal provision of the preamble "any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty." The question is of great importance for the members of the League of Nations. In fact, if a party to the Pact goes to war against a member which is not a party thereto and in so doing does not violate this treaty, but if such war happens to be condemned by the Covenant, the members of the League are not prevented by the Pact from carrying out their obligation to apply sanctions.

Under the Pact of Paris, the parties do not renounce the institution of war, but only "war as an instrument of national policy."[28]

[28] The *ius belli*, which the institution of war implies, does not disappear as a result of the conclusion of the Pact. It has been pointed out that the state which resorts to war in violation of this treaty should not be entitled to the rights of a belligerent. Boye, "Shall a State which Goes to War in Violation of the Kellogg-Briand Pact Have a Belligerent's Rights in Respect of Neutrals?," *American Journal of International Law*, 1930, p. 769 *seq.* Similarly, Moor, "Abänderung der Völkerbundssatzung und Probleme des Pazifismus," *Zeitschrift für öffentliches Recht*, 1932, p. 670. But if the rules of war were not applicable, the parties would be free to have recourse to barbarous measures which are now prohibited by these rules. The question was examined by the Committee for the Amendment of the Covenant of the League of Nations in order to bring it into harmony with the Pact of Paris, and the Committee arrived at the conclusion that the rules of the laws of war would remain applicable. League of Nations. Document C. 160. M. 69. 1930. V, p. 118. See also Bardeleben, *Die zwangweise Durchsetzung im Völkerrecht* (Leipzig, 1930), p. 85 *seq.*; Rutgers, "La mise en harmonie du pacte de la Société des Nations avec le pacte de

This formula can be better understood in the light of the preamble and of the diplomatic correspondence. War is regarded as an instrument of national policy when a state wages it in order to promote its national interests. This war serves as an instrument of individual, spontaneous, and independent political action taken on the initiative of the state concerned.

One may wonder what is the difference between this formula and the formula "war of aggression." It should be observed that the latter formula has undergone a profound evolution. In its endeavors to get rid of war, the League of Nations has continually enlarged the idea of aggression and has defined it differently in successive draft treaties. For instance, the term "aggression" has another meaning under the Treaty of Mutual Assistance of 1923 than that under the Covenant, and still another under the Geneva Protocol of 1924. Such a state of affairs has created so great confusion that it is difficult to understand what the term means unless accompanied by a definition. In comparing the two formulas, it may be useful to take into account the Covenant, which contains such a definition. As a matter of fact, the Covenant advances two different definitions of aggression: one in Article 10, the other in Article 12 and following. According to Article 10, the aggressor is the state which resorts to force in order to injure the territorial integrity or the political independence of a member. This article contemplates, not war as such, but the ends of war; it admits a material criterion which approaches that of the canonists. In contradistinction to Article 10, Article 12 and following regards as an aggressor a state which does not observe the procedure for the pacific settlement of disputes provided for by the Covenant and resorts to war. Under these articles, the criterion is formal and approaches that admitted in ancient Rome. The Pact of Paris goes farther than the Covenant. In the first place, while Article 10 protects only the territorial integrity and the political independence of the members of the League, the Pact employs a much broader formula when it condemns any war waged by a state in order "to promote its national interests." The protection afforded by the Pact is not confined to the questions of integrity and independence but has a larger application. It logically implies the doctrine of non-recognition which Secretary of State Stimson proclaimed in his note of January 7,

Paris," *Recueil des cours de l'Academie de droit international de la Haye*, 1931, Vol. IV, p. 48; Hassmann, *Der Kellogg-Pakt und seine Vorbehalte* (Würzburg), p. 61.

1932. In the second place, if the pacific procedure provided for in Article 12 and following has been resorted to but has failed, the parties are legally free to go to war, for instance, in case the Council is unable to adopt its report unanimously, or in case a report is so adopted but none of the parties complies therewith. Such "licit" wars, however, are prohibited by the Pact of Paris. The latter fills these important gaps in the Covenant.

The distinction between war as an instrument of national policy and war as an instrument of international policy differs from the distinction between aggressive war and defensive war. While the latter distinction lays stress upon the individual character of war and contemplates this institution from the point of view of a particular state, the former implies a new element, namely, the point of view of the international community. In other words, for the idea of an opposition between the interests of particular states is substituted the idea of an opposition between these interests on the one hand and those of the international community on the other. The classification of all wars as aggressive wars and defensive wars lends itself to criticism, inasmuch as it does not take into account the new conditions of international life, and passes in silence over the essential distinction between general and particular interests. If, for instance, a party refuses to carry out an award and some other countries are requested or simply authorized by the international community to compel it by force to live up to its obligations, such a war is neither aggressive nor defensive. It is merely an international police measure intended to safeguard the general interests of the society of nations, or, in other words, it is war as an instrument of international policy. It must be pointed out that such a war does not imply that the states which are engaged in it are seeking to promote only international interests and that their own interests are not involved. In fact, the promotion of the cause of justice is to the interest of the international community as well as to that of each particular state. Moreover, it is obvious that the party to the dispute is greatly interested in the enforcement of the award. The criterion of national interest is therefore insufficient in determining whether a war is or is not being waged as an instrument of national policy. It is necessary to take into account not only the existence of national interests, but also the relations existing between these interests and the general interests of the international community. If national and inter-

national interests are in accord, then war is not serving as an instrument of national policy. The decision as to whether these interests are concordant belongs, not to each particular state, but to the society of nations itself, which is the sole judge as regards the defense of the general interests. Since the essential rule of the Pact of Paris is the renunciation of any war as an instrument of national policy, the right of self-defense being left unimpaired, this rule has a general application and the contracting parties are forbidden to resort to war unless requested or authorized to do so. Such a request may be made and such an authorization may be given in advance either by virtue of certain provisions, such as those of the Covenant concerning the application of sanctions against a treaty-breaking state, or by virtue of an express decision taken by a competent organ of the international community. A country resorting to war under such circumstances acts, not as an independent party, but as a mandatory of the society of nations and must strictly comply with the terms of the mandate conferred upon it. It is true that at the present moment the organization of the international community is very rudimentary, and it may now be impossible in certain cases to enforce the law. But the fact that the Pact of Paris does not preclude the application of international police measures is of the utmost importance. The power of enforcing law is indeed inherent in every organized society, and were the international community deprived of this power, its future evolution would be hampered.

The question arises as to whether under the Pact of Paris the party to a dispute has the right to go to war against the other party in order to compel it to carry out an award. Certain writers answer this question in the affirmative.[29] It should be observed, however, that the tribunal confines itself to deciding which of the parties is right and how the dispute should be settled. It determines the responsibility with respect to the dispute, and not with respect to an eventual outbreak of hostilities. Now, the Pact condemns any recourse to war as an instrument of national policy regardless of whether the claim of a state has been recognized as just by an international tribunal or has never been presented before it.

[29] Ito, "Le pacte de Paris et le pacte de la Société des Nations," *Revue politique et parlementaire*, 1930, p. 33; Hoijer, "La mise en harmonie du pacte de la Société des Nations et du pacte de Paris," *Revue de droit international*, 1931, p. 153; Foreign Policy Association, Information Service, *The Anti-War Pact*, Vol. 4, No. 18 (1928), p. 377.

In both cases, therefore, the party which goes to war on its own initiative seeks to promote its national interests and violates the Pact of Paris. Were the states free to resort to arms against the party that did not carry out an arbitral award, serious difficulties would arise in practice. As a matter of fact, it might be very difficult to ascertain in a particular case whether a party did or did not comply with such an award. If, for instance, the tribunal decided that a state should pay a reparation to the other party, and if, according to the constitution of this state, the legislative body had to intervene, the execution of such a decision might take up much time. But were a country desirous of resorting to war, it might do so under the pretext that this delay was equivalent to a refusal to carry out the award, and might seek to settle by force other disputes which had not been submitted to the tribunal. Even if such a refusal were formally expressed, it would be dangerous to grant each state the right to go to war without any international authorization and supervision. The special committee which examined the question of bringing the Covenant of the League of Nations into harmony with the Pact of Paris arrived at the same conclusion. It proposed to amend Article 13, sec. 4, of the Covenant to the effect that the members of the League have no longer the right to resort to war against a member which does not comply with an award. The committee emphasized that it would be the duty of the Council to propose what measures of all kinds should be taken to give effect thereto.[30]

[30] League of Nations. Document C.160.M.69. 1930. V, pp. 46, 48, 53, espec. 119. See also Calogeropoulos Stratis, *Le pacte général de renonciation à la guerre* (Paris, 1931), p. 128 *seq.*; Politis, "L'accord des deux pactes," *Revue de droit international et de législation comparée*, 1931, p. 641; Gallus, *La mise en harmonie du pacte de la Société des Nations avec le pacte de Paris* (Paris, 1930), p. 43; Erich, "Le caractère juridique du pacte de Paris," *Revue de droit international* (Geneva), 1928, p. 236; Scelle, *Le pacte Kellogg; la Paix par le Droit* (1928), p. 435; Rauchberg, "Les obligations juridiques des membres de la Société des Nations pour le maintien de la paix," *Recueil des cours de l'Académie de droit international de la Haye*, 1931, Vol. 3, p. 184; Rutgers, "La mise en harmonie du pacte de la Société des Nations avec le pacte de Paris," *idem.*, 1931, Vol. 4, p. 51; Wehberg, *Die Aechtung des Krieges* (Berlin, 1930), p. 115.

In certain cases, it may be difficult to ascertain which of the parties engaged in hostilities has violated the Pact of Paris. Thus the war between Bolivia and Paraguay originated in a contested province, the Chaco district, and the question of the responsibilities incumbent upon the parties was so complicated that the League of Nations left it open.

IV. WAR AND ACTS OF FORCE SHORT OF WAR

A distinction must be made between war and acts of force short of war. This distinction is very important, not only in order to realize whether a state is or is not entitled to enjoy the rights of a belligerent, but also in so far as the meaning of the Pact of Paris is concerned. It should be emphasized that the existence of a state of war between two countries depends not upon the nature of their acts but upon their intentions. An act of force which is not intended by the party concerned to create a state of war, and is not regarded by the other party as creating such a state, does not mean war in the relations between the two parties. Thus one and the same act—for instance, the occupation by force of a foreign province—may or may not establish a state of war, according to whether the parties do or do not intend to be engaged in war.[31] This intention is clear when one of the parties makes a formal declaration of war. But such a declaration is not the necessary condition of the existence of the state of war. The intention of the parties may be expressed in other ways—for instance, by the establishment of a blockade. It must be emphasized that since this intention is decisive, a state of war cannot be created contrary to the will of the parties. A few writers, however, have recently observed that although the parties do not want to be at war, third states may nevertheless create a state of war between them.[32] Such an opinion

[31] This *animus belligerendi* is recognized as the criterion of a state of war by many authorities, such as Westlake, Oppenheim, Hall, and McNair. After a thorough examination of the problem, the last writer arrives at the conclusion that a state of war occurs "upon the commission of an act of force, under the authority of a state, which is done *animo belligerendi*, or which, being done *sine animo belligerendi* but by way of reprisals or intervention, the other state elects to regard as creating a state of war, either by repelling force by force or in some other way; retroactive effect being given to this election, so that the state of war arises on the commission of the first act of force." *Transactions of the Grotius Society* (1926), p. 45. It follows that when two states resort to acts of force, however violent, but declare that they do not intend to be engaged in war, the state of war does not exist between them. The *animus belligerendi* of one of the parties is sufficient to create a state of war. Westlake expresses very properly this idea when he says: "It [war] can be set up only by the will to do so, but that will may be unilateral, because the state of peace requires the concurrent wills of the two governments to live together in it, and is replaced by the state of war as soon as one of those wills is withdrawn." *International Law* (Cambridge, 1913), Vol. 2, p. 2.

[32] Wright, "When Does War Exist?," *American Journal of International Law*, 1932, p. 366. Similarly, another writer concludes: " 'Resort to war' may be deduced constructively from the recourse to armed force, but it is not synonymous with the use of armed force. The members of the League are competent to establish such con-

is inconsistent with well-established principles of international law. Each sovereign state has the right to decide for itself whether it wants to go to war, and if both the parties to a dispute prefer to remain at peace, a state of war between them cannot be brought about by a decision of third states. The parties which resort to force but refrain from war have undoubtedly important reasons for limiting the scope of the hostilities. They are apparently best qualified to know whether their interests require them to be engaged in war. Moreover, if the opinion in question were adopted,

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structive resort to war; but they are not under a legal obligation to do so." Lauterpacht, *"Resort to War" and the Interpretation of the Covenant During the Manchurian Dispute*, *loc. cit.*, 1934, p. 58. The arguments advanced in support of this conclusion may be summarized as follows: There are instances of third states treating acts of force as indicating war although the parties were unwilling to bring about a state of war. Such was the attitude of Great Britain in 1884 when France blockaded Formosa. A similar occasion arose in 1902 concerning the blockade of Venezuela. Furthermore, recognition of belligerency constitutes, it is alleged, another instance of a state of war being brought about by the act of a third state. Lauterpacht, *op. cit.*, pp. 52, 53. These instances, however, are irrelevant. The two afore-mentioned are cases of so-called pacific blockade, which constitutes one of the most controversial questions in international law. According to many authorities, pacific blockade implies the existence of a state of war and cannot be established in time of peace. Since the blockading power enforces the blockade not only against the vessels of the blockaded country but also against those of third states, it injures the interests of these states without at the same time assuming the responsibilities which the state of war implies. The states in question are entitled to claim that they will not suffer such an infringement of their rights unless there is an actual state of war, in which case they will apply the rules of neutrality. This is exactly what Great Britain did in 1884, and as a result of the British attitude France brought about a state of war with China. Similarly, after the United States declared in 1902 that it would not recognize a pacific blockade enforced against its vessels, the blockading powers established a war blockade of Venezuela. In these cases, a state of war was not created, as it is contended, by third states contrary to the will of the parties. The parties themselves did so, and it is legally irrelevant that in fact the attitude of third states might weigh upon their decision. As regards recognition of belligerency, the act of a third state determines the relations between this state and the disputants, but it does not in any way bring about a state of war between the parties themselves. The legitimate government is perfectly free to refrain from applying the rules of the laws of war and to punish the insurgents according to its penal law, regardless of the fact that they have been recognized as belligerents by third states. Finally, it has been contended that the opinion that a state of war can be created by an act of third states is supported by the committee of jurists which was set up in 1923 with a view to examining certain questions raised by the Corfu incident, and which reached the conclusion that coercive measures might or might not be consistent with the Covenant and that it was for the Council to decide the maintenance or withdrawal of such measures. Lauterpacht, *op. cit.*, p. 54. It must be pointed out, however, that the committee did not contemplate the question of bringing about a state of war and confined itself to expressing its opinion as to the consistency of acts of force short of

insurmountable difficulties would arise in practice. According to what criteria should third states decide that a state of war occurs? Such a decision could hardly be taken in the event of a trifling incident between the armed forces of two countries. But an incident of this kind differs in degree, not in nature, from military operations carried out on a large scale. Furthermore, would all countries be obliged to recognize a state of war brought about by a decision taken by a few third states? Obviously, such an obligation does not exist. Now, the proposed theory leads to a most peculiar

war with the Covenant. Moreover, this opinion, inspired by political reasons, gave rise to the strongest criticism in the Assembly of the League of Nations. According to the dominant opinion, acts of force short of war are inconsistent with Article 12 of the Covenant for several reasons, the chief of which is that recourse to such measures necessarily implies the existence of a "dispute likely to lead to a rupture" which should have been submitted to the pacific procedure, and the state in refraining from doing so violates its obligations. Gonsiorowski, *op. cit.*, Vol. 2, p. 339 *seq.;* Cohn, "Neutralité et la Société des Nations," in Munch's *Les origines et l'oeuvre de la Société des Nations* (Copenhague, 1924), Vol. 2, p. 160; Gralinski, *Le règlement pacifique obligatoire des différends internationaux suivant le pacte de la Société des Nations* (Paris, 1925), p. 78 *seq.;* Guani, "Les mesures de coercition entre membres de la Société des Nations," *Revue générale de droit international public*, 1924; Kulski, *Le probleme de la sécurité depuis le pacte de la Société des Nations* (Paris, 1927), p. 104; Petrascu, *Les mesures de contrainte internationale qui ne sont pas la guerre entre Etats membres de la Société des Nations* (Paris, 1927), p. 190; Politis, "Les représailles entre Etats membres de la Société des Nations, *Revue générale de droit international public*, 1924; Schücking und Wehberg, *Die Satzung des Völkerbundes* (Berlin, 1924), p. 508 *seq.;* Schuhmann, *Die Repressalien* (Rostock, 1927), p. 80 *seq.* It would seem that the League of Nations has concurred in this view. Thus in the Greco-Bulgarian dispute the Council considered that by occupying a part of Bulgarian territory with her military forces, Greece had violated the Covenant. Most recently, the Assembly held, in its report adopted on November 24, 1934, in the dispute between Bolivia and Paraguay, that in resorting to force and in refraining from submitting the dispute to pacific procedure the parties had violated Article 12 of the Covenant (Part IV, Sec. 1, par. 3, of the report). The above considerations dispose of the opinion according to which "if members of the League wish to declare measures of armed force illegal in a particular case, they are legally authorized and entitled to do it; but they can, without acting illegally, refrain from doing so." Lauterpacht, *op. cit.*, p. 59. Such measures are illegal under the Covenant, and the members of the League cannot alter this fact. They do not, however, give rise automatically to the application of the sanctions provided for in Article 16, because such an application is contingent, not only upon a violation of the Covenant, but also upon a resort to war. The theory concerning an alleged possibility of bringing about a state of war by an act of third states is apparently intended to show that the League of Nations had the right to apply sanctions in the Sino-Japanese dispute. But this artificial theory is quite superfluous, and the fact has been lost sight of that even in the absence of a state of war the members of the League could, if they only wanted to do so, take most drastic measures of coercion under certain provisions of the Covenant, especially under Article 10.

situation, in which there are belligerents which do not want to be belligerents, neutrals which are not regarded as such by the parties, and still other states which are neither belligerents nor neutrals.

Under the Pact of Paris, the parties renounce war in so far as it serves as an instrument of national policy. Do they renounce also acts of force short of war? The Pact does not contain any express provision to this effect. It has been observed that such a renunciation is implied in Article 2, according to which the contracting parties agree that the settlement of all disputes "shall never be sought except by pacific means." This provision, it is alleged, goes much farther than that of Article 1 and prohibits any act of force whatever, because such acts cannot be regarded as pacific means.[33] It is difficult, however, to concur in this view. The Pact is limited by its very title to the renunciation of war. During the negotiations, all attention was focussed on Article 1, which constitutes the heart of the treaty, and there is nothing in the diplomatic correspondence that could be regarded as expressing a common intention of the parties to renounce all acts of force. The term "pacific means" may be used in contradistinction to violent means. But that is not its legal meaning. In international law, the term means all measures other than war. It is used to include even such measures of coercion as pacific blockade, which constitutes perhaps the most dangerous of all acts of force. If the parties had wanted to condemn *any* recourse to force, they would not have passed in silence over so important a matter, but would have drawn up a special provision to this effect. Such a provision would have been inserted in Article 1, not in Article 2, because the former article, which lays down the essential principles of the treaty, is devoted to determining the measures of coercion to be renounced, while the latter deals with another matter, namely, the settlement of disputes. Article 2 completes the provision of Article 1, and should be read in the light of it. Since recourse to war is renounced, the settlement of international disputes is never to be sought except by pacific means—that is to say, not by war. It must be added that according to a fundamental principle of interpretation the treaty provisions imposing obligations upon the parties cannot be construed extensively. Finally, the opinion that Article 2 prohibits

[33] Bardeleben, *op. cit.*, p. 85; Gallus, *op. cit.*, p. 33; Moller, *op. cit.*, p. 95 *seq.*, Wright, "The Meaning of the Pact of Paris," *American Journal of International Law*, 1933, p. 52; Hassmann, *op. cit.*, p. 56.

any act of force whatever is contrary to the provision of Article 1. In fact, such an interpretation would make illegal any war without any qualifications, even war as an international police measure; while the contracting parties made it absolutely clear during the negotiations, and in Article 1, that they wanted to renounce war only in so far as it serves as "an instrument of national policy."

The fact that the Pact of Paris is limited to the renunciation of war and leaves aside the question of acts of force in general does not mean that, as has been contended, all that is surrendered is the privilege of declaring war.[34] It has already been shown that the legal criterion making it possible to distinguish war from acts of force short of war is the intention of the parties, and that a formal declaration of war constitutes merely one of the ways in which this intention can be expressed. On the other hand, a state may declare war in certain cases without violating the Pact of Paris. For instance, in the event of its territory having been invaded by armed forces of another country, the attacked state is free either to make forthwith a formal declaration of war or to declare that if the other party refuses to withdraw its troops within a certain time limit it will regard such a refusal as bringing about a state of war. Since retroactive effect is given to this declaration, the state of war arises on the commission of the first act of force and the treaty-breaking state is not the party which declares war, but the party which was the first to resort to arms. It follows that although legally the signatories of the Pact of Paris are free to have recourse to acts of force short of war, in fact such freedom is much limited, because in doing so they run the risk of violating the Pact if the attacked country chooses to bring about a state of war. There is a tendency to draw general inferences from the Sino-Japanese dispute in examining the Pact of Paris, although this case is quite exceptional, owing to the specific conditions prevailing in the relations between China and other Powers. If similar events occurred in normal relations between two countries, a state of war would be brought about and there would be no difficulty in ascertaining which of the parties had resorted to war in violation of the Pact. This is exactly what happened in the Italo-Ethiopian dispute. On October 3, 1935, Italian troops invaded Ethiopia without any declaration of war, and Italy contended that these military

[34] Borchard, " 'War' and 'Peace'," *American Journal of International Law*, 1933, p. 114.

operations had the character of police measures which were necessary for the security of her colonial possessions, but did not constitute an act of war. The Ethiopian government, however, opposed this view. Its representative declared before the Council of the League of Nations that in his government's opinion the Italian invasion had brought about a state of war in violation of the Covenant, and that, consequently, Article 16 concerning international sanctions was applicable. The Council concurred in this view. In its report adopted on October 7, 1935, that body emphatically stated that Italy had resorted to war notwithstanding that she had refrained from making a formal declaration of war (Part II, sec. G, of the report).

Finally, it must be added that all acts of force are inconsistent with the spirit of the Pact of Paris. Apart from its legal meaning, this treaty has a great political importance, since it constitutes a world-wide agreement for the maintenance of peace. Politically, the contracting parties are entitled to call the attention of a state to the provisions of the Pact and to urge it to refrain from acts of force which endanger the peace of nations. But according to the preamble this state is not denied the benefits furnished by the treaty.

V. PACIFIC SETTLEMENT OF DISPUTES

Under Article 2 of the Pact, "the high contracting parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means."[35] Does this provision mean that, *a contrario*, the parties are under an obligation to submit any dispute to a procedure of pacific settlement? Certain writers have answered this question in the affirmative,[36] but they have not drawn from their statement the consequences which logically follow. M. Cot emphasized these consequences in his report submitted to the French Chamber of Deputies in which he pointed out that since the parties were bound to settle all disputes by pacific means, and since such means as diplomatic negotiations and the procedure of conciliation did not

[35] There is a difference between the English text and the French text of this article. While according to the former "the high contracting parties *agree* . . . ," under the latter "les hautes parties contractantes *reconnaissent* . . ." The French expression is much weaker than the English one and conveys the idea of a mere recognition of a general principle.

[36] Miller, *op. cit.*, p. 124 *seq.*; Calogeropoulos Stratis, *op. cit.*, p. 106 *seq.*

necessarily result in a final settlement, Article 2 of the Pact of Paris proclaimed the principle of compulsory arbitration without any reservation. If the parties could not be reconciled, they should have recourse to an arbitral tribunal and bring before it any dispute—not only justiciable controversies, but even purely political conflicts.[37] A refusal to do so would constitute a breach of the Pact of Paris. Such an opinion, however, cannot be accepted. Article 2 does not provide that the parties undertake to settle their disputes by pacific means and does not specify these means, but it is drawn up in a negative form and says simply that the settlement of all disputes shall never be sought "except by pacific means." Had the signatory states intended to accept the principle of compulsory arbitration, they would not have failed to make it clear in the text of the treaty. Now, the term "arbitration" does not even appear in the Pact of Paris. Moreover, the treaties of arbitration entered into by the United States with other Powers, such as that concluded with France on February 6, 1928, during the negotiations which led up to the conclusion of the Pact, show that the opinion in question conflicts with the views of the states concerned. These treaties provide, namely, that even certain justiciable disputes, such as those the subject-matter of which concerns the interests of third states, or involves the maintenance of the Monroe Doctrine, will not be submitted to arbitration. Is it possible to say that in refusing to bring these disputes before an arbitral tribunal the parties become guilty of a breach of the Pact of Paris? A state which refrains from having recourse to an arbitral tribunal, to a commission of conciliation, or to any other method of pacific settlement, and leaves its dispute unsettled, does not violate the Pact provided it refrains from war.[38] It goes without saying that if a contracting party is a signatory of a treaty of arbitration or of a treaty of conciliation, it must observe the pacific procedure which has been agreed upon. But the legal title to be invoked in such a case is the treaty in question and not the Pact of Paris. Article 2 has the character of a moral declaration intended to stimulate the development of procedures for the pacific settlement of disputes, and the states which want to live up to the spirit of the Pact

[37] *Op. cit.*, p. 20 *seq.*, 28 *seq.* It is interesting to add that Senator Labrousse emphatically opposed this view in his report, *op. cit.*, p. 15.

[38] Gallus, *op. cit.*, p. 13; Ito, *op. cit.*, p. 26; Hoijer, *op. cit.*, p. 138; Le Gall, *op. cit.*, p. 93; Moller, *op. cit.*, p. 95; Politis, "L'importance juridique du pacte de Paris," *L'Europe nouvelle*, 1929, p. 315; Rutgers, *op. cit.*, p. 64.

should enter into negotiations with a view to concluding appropriate international agreements.

From the legal point of view, the Pact of Paris constitutes an epoch-making document. For the first time in the history of mankind, almost the entire civilized world has condemned any war waged by a state in order to promote its selfish interests. And if the contracting parties were determined to carry out their solemn pledges in good faith, the peace of the world would be firmly established. But experience teaches that states have often violated their international obligations with impunity. Were the community of nations enabled to redress the wrongs, such violations would be prevented, because no state could profit by its unlawful action. Obviously, the practical value of the Pact of Paris depends greatly upon the possibility of enforcing its provisions. The treaty would be really effective if it were supplemented by a world-wide agreement according to which the parties should undertake to apply jointly certain measures against any treaty-breaking state. It has been contended that such an idea is false, and that to prevent the natural development of strong states by supporting the weak ones is a sorry service to peace and stability.[39] This opinion is surprisingly akin to that of a theoretical founder of anarchism, Max Stirner, who said: "He who has force has right, he who has no force has no right." The natural function of the law is to defend the rights of all, especially the rights of those who are the most exposed to the abuse of force: the rights of the weak. If such an idea is called "evangelism" as opposed to "realism," the entire system of law would not be real. But true realism does not consist in taking into account only material forces. There is still another factor which plays the most important rôle in the evolution of mankind, and which cannot be easily discarded: the moral forces of the world. The enforcement of law constitutes the necessary condition of the reign of peace and justice. Pascal said: "Justice without might is impotent. Might without justice is tyranny. Justice without might is unavailing, for wicked people still remain. Might without justice stands condemned. We must therefore mate justice with might, and to that end we must ensure that what is just is mighty and that what is mighty is just."

[39] Borchard, "The Arms Embargo and Neutrality," *American Journal of International Law*, 1933, p. 296.

THE RESPONSIBILITY OF THE PRESS IN A DEMOCRACY*

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It gave me real pleasure to accept your committee's invitation to address you. As a lay member of your Association, for years I have longed for opportunity to witness the rites of your priesthood. I have taken part in some of your round-table conferences of professors and politicians. The effort made in this series to cross-fertilize the knowledge of the world of research and the experience of the world of action is admirable in conception and stimulating in results. The members of this Association, by their life devotion, give indorsement to the statement of Alexander Pope that the proper study of mankind is man. And surely it is a necessary study, one all the more essential in such a fast-moving world as that we know today.

Man is a timid, staring creature. He moves through life in a mist of ignorance and fear. In thinking about his problems and his perils, I am reminded of something that Henry St. John, Lord Bolingbroke, wrote in his *Letters on the Study of History*: "We are not only passengers or sojourners in this world, but we are absolute strangers at the first steps we make in it. Our guides are often ignorant, often unfaithful . . . In our journey through it, we are beset on every side. We are besieged sometimes even in our strongest holds. Terrors and temptations, conducted by the passions of other men, assault us; and our own passions, that correspond with them, betray us."

As we travel through this world, man has increasing need for "the maps and journals of earlier travelers through the same country." The good and ill success of those who have trod the path before us, and have been exposed to the same accidents and temptations, should be equally instructive.

The journals that Bolingbroke had in mind were those prepared by the memorialists, annals-writers, historians, and philosophers. Then the newspaper had grown but little beyond the news-letter of the Fuggers or the satire of an Addison or Steele. Thanks to the technological revolution, our present era is marked by such a pro-

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liferation of the printed word that the beginning traveler can avail himself of journals not only telling what happened to remote predecessors upon the road, but also purporting to give an almost minute-by-minute account of some of the things happening on the road right now. And so it has come to pass that much of the world depends upon the daily press to tell it about this morning's *mêlée* and to explain what the shooting was all about.

Writing in the 'eighties, Lord Bryce remarked that the United States of America was about as close to having an actual government of public opinion as was any nation in the world. There are some who feel that this is less true today; that we are closer to a government by propaganda, which is an abused and distorted public opinion, and this because the agencies chiefly responsible for forming public opinion have failed to do their job. Whatever may be the truth of this, there can be no doubt that the press does share with the school and the church a chief responsibility for the formation of the American public mind.

Certainly at adult levels, the newspaper is the most constant, the most pervasive, and at times the most insidious of the agencies by which the public's mood is formed and its will made active. Therefore it is fitting that we consider together today the topic I was asked to treat: "The Responsibility of the Press in a Democracy."

To every editor who talks about the ideals of the press, there comes at times the uneasy feeling that some of his fine phrases may be more wish-fulfillment than realities, that they may be verbal compensations for hopes that once were bright but now lie dim and frustrate. And when one feels this way, he recurs to that sage sentence of Charles II—"Do as I say; don't do as I do." One reason for this is that, generally, it is so hard to translate our ideas or ideals into actually realizable results.

At any event, the candid journalist knows that the newspaper is impressed with a grave responsibility for its social consequences. It is dangerous to make a large grant of power—whether economic, social, or political—unless an equivalent responsibility be enforced upon the person or institution to whom the power has gone. Lacking this, society must have some governor of its own to keep power from irresponsibility. This is true of the man who wholesales or retails credit through the bank, or of the industrialist whose decision may determine whether a hundred thousand men work or

walk the streets, or of the newspaper which plays so important a part in shaping the mind of the crowd.

All this is very true, and yet when one tries to think through the next step, and to find out how to be sure that the newspaper's responsibility will be equivalent to its power, it becomes an exceeding difficult thing. One trouble is that the newspaper is neither flesh, fowl, nor good red herring, but a cross between all three. The flesh is in that it involves an expensive, complicated, high-velocity factory operation. Its fowl is the newspaper as a demanding business enterprise. Its good red herring is its professional endeavor to mirror the stream of life through the printing of the news.

Embracing in a single institution a factory, a business, and a profession, journalism struggles with a difficulty of definition which sometimes leads to begging the question by calling it "the newspaper game." What is more, this triple function leads to varying estimates of what is important in the paper. The same city might have one newspaper whose chief excellence lies in its magnificent factory establishment; and a second, notable as a business institution, whose ever-tinkling cash register brings joy to stockholders' hearts. And then there might be still a third which earnestly endeavors to reflect the moving stream of events and measurably succeeds in doing an honest job. Before one can safely assess the press's responsibility to society, one must examine this intra-institutional conflict of forces.

First, the factory phase. The last century has transformed the paper from job shop to great industrial enterprise. In the days of Old Hickory, about all that the founding father of a paper had to do was to scrape up a few fonts of battered type and beg or borrow an old Washington hand-press. Even in the days of Stephen A. Douglas, newspapers could be established with little credit and less cash. In the Little Giant's papers, there are letters from many people asking loans of from $200 to $1,000 to set up a paper to support him. There were several from Harvey M. Watterson—the Tennessee father of Louisville's "Marse Henry." In the 1860 campaign, Harvey Watterson and a group of stalwart conservative Tennessee Democrats scraped together a little money and started up a Douglas daily in Nashville. In October, Watterson wrote Douglas: "We will keep it going until the election if it takes every button off my coat." And keep it going they did.

But after the Civil War came the great inventions of printing, not from the type itself but from a curved stereotype plate affixed to a cylinder on a huge high-speed rotary web press. Even more amazing was Ottmar Mergenthaler's linotype machine, a device with almost the brain of a man. With these, machinery and labor costs waxed great and newspapers involved larger and larger investments and operating burdens. Thereafter a new paper could no longer be started with much courage and no cash, nor be kept alive on printing post-office blanks. The inventors of our technological age were unconscious practitioners of newspaper birth control.

This rising tide of production expense put increasing emphasis on the business of the newspaper. Emerson said that were a man to build a better mouse trap than had been built before, the world would beat a path to the middle of the forest to buy it from him. But the fact is that the inventor must send his salesman into the heart of the forest, must overcome the customer's sales resistance, and then sell the trap on the installment plan.

At any event, there is no use publishing a newspaper unless it has subscribers to read it. To secure these, every paper builds up a highly elaborate apparatus in its circulation department, with manager, city carriers and supervisors, news agents for nearby towns, truck drivers, pay-rolls, expense, and speed. All this to get subscribers—and then, when you have secured them, they pay you only from a quarter to a third of what it costs to publish the paper.

This difference between what the subscriber pays and what the paper costs has to come from advertising, the second large branch of the newspaper business. The sale of advertising is elaborately organized and specialized. I could spend several hours talking to you about the mysteries of milline rates, circulation analyses, merchandizing assistances, "promotions," food shows, all sorts of tricks and gadgets for "selling space."

Advertising, in its proper use, has social value. It is a tool of distribution and, like any other tool, it is given its ethical significance by the way that is is used. Now I know that some advertising is foolish, some anti-social. I am opposed to advertising which is devoted to creating wants which are not needs, to advertising which misrepresents the merit of the good or service advertised. Truth in advertising is indispensable, and there is an increasing

pressure within the advertising world itself to put more content into the phrase.

But for all this, advertising in its proper use has social and economic justification. In its proper use, advertising can and does largely increase the public demand for a particular good or service. By so doing, it can and does permit the maker of the good to reduce his overhead costs, as well as to give greater employment to labor. In the merchant's case again, volume is increased and employment improved. Finally, the consumer secures the good he needs at a lower price. Advertising, in its proper use, performs a social and economic service no man can legitimately criticize.

In the lush 'twenties, newspapers had a great advertising increase; with the Hoover crash, our volumes slid down the toboggan, sometimes to half the former figures. There has been betterment since 1933, but some shrewd press executives believe that probably the huge volumes of the lamented "new economic plateau" are gone forever. This would mean a basic readjustment of the newspaper business. For two years, publishers have been struggling with increasing operating costs. Never a low-wage industry, newspapers are now having to pay higher wages despite decreased advertising revenues. This increased cost must come from somewhere. One way the situation can be met is by cutting the size of the staff. A second is to make substantial increases in advertising rates. A third is for the subscriber to pay more for his paper, a very healthy thing. I suspect that the newspaper of tomorrow will be a smaller paper, with less advertising—the advertising tail will do a little less wagging of the journalistic dog. The subscriber, paying more of its cost, will receive a better paper and will have more confidence in it.

This brings me to the newspaper profession, the phase that gives journalism its main social significance. As a profession, it is chiefly concerned with news and its editorial treatment. News is—or ought to be—a mirroring of the stream of life. Editorials should represent what the editor thinks about it all.

In the last few decades, a third thing has been pushing its way to the head of the procession. This is features, journalism's circus and vaudeville show. Features constitute a little world of their own. Feature syndicates stay awake nights thinking up bright new ideas to sell to newspapers from Florida to Oregon. Editors are a lot of sheep; let the syndicate salesman show you the list of papers

that wired in for the new stunt, and you sign right on the dotted line. All of which tends to standardize and stereotype our journalism. All of which, too, has put a new duty upon the editor. Now he must become clairvoyant to the reader-interest of his paper's love advice and fashion services, and the comics that he picks must be winners.

Many old-time editors despise this strange new world of features, and yet there may be more merit to it than these unreconstructed rebels suspect. We know that all work and no play makes Jack a dull boy; we know, too, that in our amazing modern world people are rushing around with such velocity that they accumulate extraordinary nervous tensions needing release. Features which contribute to this end are not without some merit. Dorothy Dix may really assist Heaven in protecting the poor working girl. But as the editor examines the features in his own paper, sometimes he concludes that while some are informative and instructive, few of the comics are funny and most of the assortment is as dull as ditchwater can possibly be. And yet there are signs of improvement, that features are coming to have more of a cultural and critical content, that some newspapers are moving toward a high-class informative magazine. The newspaper of tomorrow should have fewer and better features, a consummation devoutly to be wished.

Often you hear it said that the age of great editors is over. Once we had Joseph Medill's and Samuel Bowles' and Horace Greeley's and Charles A. Dana's and Henry Grady's and people like that. Now, they say, such editors are casualties to cash-register journalism. There is some truth in this criticism, but the change has a reasonable background. A century ago, American journalism was polemic. Every editor had a party, helped pick its candidates and write its platform. He told his readers of a simple world of good men opposed by bad men, and he was always on the side of the good. His editorials pointed with pride or viewed with alarm. He dipped his quill in acid, exhorted his readers, and expected them to go out and fight. They on their part were equally partisan. All over the North, Abolitionists took Greeley's *Weekly Tribune* because they knew it would thunder out about the Crime Against Kansas. The Democrats took Bennett's *Herald* and swore by it the same way.

The great mechanical alteration of newspaper production put an end to this age of table-pounding. Capital needs became im-

portant, newspapers began to pass into the hands of bankers, merchants, magnates, and other absentee owners. Or if the owner gave his attention to the paper, he was likely to be concerned with costs and revenues. In any event, men of capital were more interested in profits than in prophecy. The editorial page began to be thought of as a curious sort of journalistic vermiform appendix, which once might have had some value; now we would better keep it, because the paper might look peculiar without something that looked like an editorial page.

I remember the advice one such kindly soul gave me when I was starting out in the Fourth Estate. He felt that every paper ought to have one good vigorous hate to editorialize about at least once a week. It ought to be a good hate, and if possible more than a thousand miles from home. He himself had found an ideal selection in the outrageous piracy against fur-bearing seals in the Kamchatka Inlet.

Of late there has been a betterment in editorial pages. Many of our great newspapers have passed through the purely commercial phase, have become institutions, and as such have rediscovered the editorial page. Today, there are more newspapers than ten years ago whose policies are set in the editor's office, whose editors write what they really think, believe what they are saying, and have a sense of social conscience in saying it.

But there has been one marked change in the editorial approach. The best editorials today explain rather than coerce. The editor undertakes to relate an item to its general frame of reference. He introduces explanation and background, so that the reader, having informed himself, can make up his own mind as to what it is all about—or at least think that he is doing so. And this is a real gain.

Now as to news, the last and most important segment of the profession of journalism. The gathering, writing, and printing of news is the true function of the press; otherwise a combination of a medium for crossword puzzles and advertising circulars could take its place. In a real, if not in a legal, sense, a newspaper must be dedicated to the printing of news. The world of most people is the newspaper world, and their moral standards, their equipment of facts and ideas, come from the daily printed page. Their picture of Russia is shaped by items with Moscow date-lines; the papers create their mental image of Chicago as a city with racketeers on every corner, a place in which King George is abhorred and Al

Capone is a hero and a patriot. All too many get from the press a distorted image of the New Deal, and listen anxiously for Roosevelt's heavy tread on the road to Moscow.

Now the newspaper cannot shift its responsibility for giving such unreal pictures to those who read it. Of course when Big Bill Thompson rides King George for a reëlection, or when Dutch Schulz is shot in a telephone booth, news is news and demands publication. But it is my contention that, by shifting the focus of news treatment, the newspaper really can alter the picture that the average reader has of his world.

But not only does the reader often get a distorted impression of what is happening; at times he reads his paper and gets no impression at all. The papers often are so busy rushing unrelated facts into print that they fail to tell the truth behind the facts, and the result, so far as the reader is concerned, is nothing net.

The other day a newspaper man went out to call on his best girl, and they listened to a radio summary of what is what in Ethiopia. After it was over, she turned to him and said: "I was reading about that in the paper, but I couldn't make heads nor tails of it; now I understand."

There is more to this than an apt anecdote. It points to something that the newspaper of tomorrow must undertake to do if it expects to survive. Too much of our news is news of two dimensions—it has length and breadth, but no depth. Perhaps the journalist's greatest task is to find the way to put this needed third dimension into news. We must find the way to make the important interesting, rather than to give the interesting a spurious importance.

There is a conventional objection to this thesis. It is that the newspaper as a business must have subscribers in order to get the advertising necessary to keep it alive. To get subscribers, "we must give the public what it wants." Isn't this putting the cart before the horse? The average editor does not know what the public wants—he merely guesses at it. After all, the public gets what the newspaper gives it, and the newspaper every day is printing and habiting the public to want what it gets. The editor who defends himself from criticism by saying that he has to give the public what it wants has sometimes himself been the chief agent in creating the public demand that he deplores. Often we are the architects of our own misfortunes. Newspapers do not have to be completely

the creatures of their publics, but, to a degree at least, can themselves create the publics that sustain them.

Now a newspaper can treat news constructively, just as it can treat it sensationally. Taking the path of least resistance, a paper can build up a Ku Klux Klan or inflame a lynching mob. But by a constructive treatment of news over the course of years, it can reduce frictions between groups or classes or races; it can relieve human tensions and promote that understanding and good-will which is such an essential lubricant for a complex society. Nor does this mean that to do so the paper must forego that publishing profit necessary for maintaining the institution. Dividends can come from making the important interesting and putting content into news.

What is more, the very shape and form of the present is forcing the newspaper world to do a better job. The radio does more than tell the world what the shooting in Ethiopia is all about. It has developed a mechanism by which any news event that can be anticipated in advance can be put upon the ether just as soon as the event itself occurs. So anyone who will turn the dial can hear a President's speech or a broadcast from the Pope long before the great rotary presses begin to turn. Added to this, television is right around the corner and the time will not be long before you can see as well as hear the event.

Naturally this is having its impact on the shape of news in print. It is diminishing journalistic eagerness to be "first" upon the streets with a "scoop." It is forcing the paper to give a new emphasis to background and relation, to better, more interpretative writing—in a word, to give news its third dimension.

This change is calling for the addition of a new element to the newspaper staff: men with X-ray eyes who can see and write the deeper meaning of the fact. This does not mean a staff of cynics, nor of dialecticians, nor of philosophers floating about on a cloud. But it does call for men and women who know economics, sociology, psychology, history, and government—a staff that can set an event into its frame of reference and tell the why as well as the how. And such a change will give us a more intelligent, a more instructive, and certainly a more constructive press.

Let me turn aside a moment to suggest to you social scientists a way in which you yourselves can participate helpfully in this change. How many of you know personally the editors, managing

editors, and city editors of the papers in your own community? How often do you go down to an editor's office and tell him what you think about his paper, and the general condition of affairs?

The editor is supposed to be an oracle on all human facts and theories, but once you know him, he will lay aside his pontifical vestments and prove a very humble fellow. You will find him truly interested in printing a better paper, for he really wants to get at the direction of movement of the stream of life, and to reflect it helpfully. He would like to have you come down and tell him how wrong this story was, what a bad impression was given by that hasty headline. But then go a step further and tell him how you think he could improve his apparatus and technique. Make the criticism constructive. You will find him eager for your help.

Then how many of you have the habit of writing a letter to the editor when there is something in the paper that you either dislike or like? You would be amazed if you knew how much attention editors pay to letters from their readers. Most of us are working in a fog. We don't know what the public wants or thinks or feels, and are anxious to get every little inkling we can. Do not make your letter to the editor too long. Translate it from your academic jargon into words the public can understand. By doing things like this, you yourself can play a useful part in helping papers really measure up to their social responsibilities.

In these days, no editor can make a speech on journalism without saying something about the freedom of the press. That phrase, like freedom of speech and freedom of assembly, is a part of our American vocabulary. And it should be; for as one looks around the world, he can hardly escape shuddering at the slavery of the press in such countries as Russia, Italy, and Germany. This is something that must not come in these United States; for a free press is an indispensable part of the freedom of the human mind, which is the greatest thing in the world.

Some enemies of freedom of the press, one regrets to say, are in the press itself. These are the men who ignore the public trusteeship of their institution, who give only one side of the picture, who deal in half-truths or whole lies. Such men put weapons in the hands of those who would end the freedom of the press.

As I have said, I believe deeply that the newspaper is a public trustee with social obligations that it must maintain. And I believe, too, that no great power should be without social control. But

whenever I try to think through to the next step and to find some place where control can be vested, some mechanics of external authority over the press which will not bring with it more evils than now need correction, I am completely baffled.

Hitler's Germany shows clearly what happens when government controls the press. There is neither fact nor truth nor honesty in the Nazi sheets; how can there be when a Ministry of Propaganda sends out lists entitled: "Things you cannot print"? The Russian press likewise hews to the party line. The way out is not for us to subject the press to government, but to reform the newspaper institution from within.

I shall close with a quotation. In his mandate establishing the Columbia School of Journalism, the great Joseph Pulitzer said: "Our Republic and its press will rise and fall together. An able, disinterested, public-spirited press, with trained intelligence to know the right and courage to do it, can preserve that public virtue without which popular government is a sham and a mockery. A cynical, mercenary, demagogic press will produce in time a people as base as itself. The power to mould the future of the Republic will be in the hands of the journalism of future generations."

Pulitzer wrote these words in 1904, but they have even greater truth today. Upon the press rests the gravest of responsibilities. Wells has said that there is a race on between civilization and catastrophe. Unquestionably we shall lose this race unless we can find a way to narrow the terrible time-lag between the happening of a fact and the people's perception of it.

The press must quicken society's lagging steps in diminishing this time-lag; it must give news its third dimension; it must help the men and women of our generation in their effort to relate themselves constructively to the pattern of the times. It must vitalize the text of Scriptures: "Know ye the truth and the truth shall make you free." All these things constitute the newspaper's obligation to our democracy. In these it must and shall not fail.

STATE CONSTITUTIONAL LAW IN 1935–36

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There is a kernel of truth in Chief Justice Hughes' remark that "we are under a Constitution, but the Constitution is what the judges say it is." To realize its full significance, "constitution" must be written in the plural. We have forty-nine courts of last resort, each interpreting the fundamental law of its own jurisdiction. The essential similarity of our state constitutions, and of our state bills of rights to that of the national constitution, together with the tendency of common law courts to follow each other's decisions, lend an element of stability to American state constitutional law that otherwise would be lacking. At the same time, even within so short a period as a year, the interplay of personalities may be seen moulding new doctrines in particular jurisdictions, which doctrines take on added significance because of the realization that they may, in time, serve as a basis for redirecting the course of constitutional development in other jurisdictions as well.

The course of judicial legislation in the constitutional field is dependent upon the types of controversies which arise involving the interpretation and application of constitutional provisions. These, in turn, reflect the changing interests of the day. Since many practitioners of the law tend to confuse the terms "unprecedented" and "unconstitutional," statutes calling for action of a new and novel sort are as certain to be contested as those which challenge well established rules of constitutional law. Consequently, it was only normal that in the period when the United States Supreme Court was striking down the National Industrial Recovery Act and the Agricultural Adjustment Act, and judiciously sidestepping the issue of the validity of the power program of the T.V.A., and when the lower federal courts were struggling manfully with the many problems raised by the activities of the P.W.A., state courts were busily occupied passing upon similar and complementary issues. The recovery program called for a high degree of state and national coöperation. With so little tradition of coöperation, this reopened the issue of the nature of our federal system and the relation of the states to the nation. Because of the permanent importance of the legal problems involved, the 1935–36 decisions affecting state constitutional law may prove to be among the most important in the entire history of judicial review. They may be discussed conveniently under the following headings: (1) separation and delegation of powers; (2) inter-governmental relations; (3) individual rights: procedural; (4) individual rights: substantive; and (5) fiscal powers.[1]

[1] Mrs. G. G. Bell, research assistant in political science, gave invaluable aid in

I. SEPARATION AND DELEGATION OF POWERS

State Adoption of National Laws. The National Industrial Recovery Act was viewed from the first as an incomplete piece of legislation. Because of the lack of congressional power over intrastate commerce, supplementary state laws were obviously necessary to effect the complete regulation of business activity contemplated by the "codes of fair competition." It was likewise evident that a diversity of state and national requirements in closely related activities would place an unreasonable burden upon industry and trade. Hence the typical state industrial recovery act adopted the terms of the national codes as standards of fair competition, making non-compliance therewith a state offense, while authorizing the governor, or other state official, to promulgate additional codes governing intrastate matters not covered by the national codes. Many of these statutes were passed before any codes had been adopted, and all obviously contemplated that when the President promulgated new codes, or amended or cancelled existing ones, the state rules should automatically change accordingly. The Agricultural Adjustment Act soon developed a similar following of state laws.[2]

If it is contrary alike to the doctrine of separation of powers and the common law maxim *delegata potestas non potest delegari*—both supposedly imbedded in our constitutional provisions that "all legislative power" is vested in "the legislature"—for the latter body to delegate sweeping powers to executive officers to determine what the law shall be, is it not equally unconstitutional for it to attempt to confer such powers upon the legislative or executive agencies of a distinct government? A California appellate court, stating that "we are a nation, not an alliance of foreign states, and our President is not a foreign Potentate," unanimously held that it is not, the legislature having exhausted the entire field of discretion when it declared that the state and federal rules governing closely related activities shall be identical.[3] Although this ruling would seem to be in keeping with decisions of the federal Supreme Court, which has not objected to Congress conditioning the meaning of a national law upon the future laws of the states,[4] it was out of line with a

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the preliminary analysis of cases for this article. They were selected from those reported in the advance sheets from April, 1935, to May, 1936. Unless otherwise indicated, the decision was rendered by the court of last resort of the state concerned.

[2] See note, "State Legislation in Support of the N.I.R.A." (1934), 34 *Columbia Law Rev.* 1077. Cf. the Model State Recovery Law prepared by the N.R.A., 3 *Federal Trade and Industry Service* 60,011; N.R.A. Release No. 3,243, Feb. 12, 1934.

[3] *Ex parte* Lasswell, 36 P. (2d) 678 (Sept., 1934), discussed in this REVIEW, Vol. 29, p. 611.

[4] See *Ex parte* Siebold, 100 U. S. 371, 421, (1879); Clark Distilling Company v. Western Md. Ry., 242 U. S. 311 (1917); Whitfield v. Ohio, 56 Sup. Ct. 532 (1936).

previous *dictum* of the California supreme court[5] and the weight of decisions in other states.[6] Any optimistic belief that this decision was indicative of a willingness on the part of courts in general to discard accepted rules in favor of a more workable system of federalism was rudely shattered by the *dictum* of the Washington court that the section of the state agricultural adjustment act adopting license agreements promulgated by the national Secretary of Agriculture is unconstitutional,[7] and by the actual ruling to the same effect by the New York court[8] under the state recovery act.

The majority and minority opinions in the latter case, which was decided by a four to three vote, give excellent summaries of the two conflicting views as well as of the nature of the problems involved. The petitioner had violated, and proposed to continue to violate, the price-fixing provisions of the Retail Solid Fuel Industry Code approved by the President on February 14, 1934, subsequent to the adoption of the state statute under which it purportedly became the law of the state in intrastate commerce. Chief Judge Crane wrote: "Stripped of all its verbiage, . . . we find that the legislature . . . has turned over to the National Administrator the question of determining whether there shall be price fixing in New York State of coal, and what it shall be . . . The state legislature cannot leave to Congress to determine that an emergency exists. . . . [It] cannot leave to a National Administrator to declare what shall or shall not be a crime in New York State. . . . The law . . . is a mere shell, leaving to national bodies . . . the power to make the laws of New York." The dissenting judges saw it in quite a different light. "Economic laws," they wrote, "ignore state boundaries artificially created to mark the limits of local sovereignty . . . The legislature was called upon to decide whether the remedy which Congress was seeking to apply to conditions existing in interstate commerce was in its opinion a sound remedy which could be applied also to the same conditions existing in intrastate commerce. . . It could if it chose create its own administrative machinery, but . . . it would introduce chaos into a situation which called for order. Businesses which enter into competition with each other would be subject to different rules . . . ; indeed, departments of the same business

[5] *In re* Burke, 190 Cal. 326, 328 (1923).

[6] See Opinion of the Justices, 239 Mass. 606 (1921); State v. Intoxicating Liquors, 121 Me. 438 (1922); 34 *Columbia Law Rev.* 1077 (1934); 33 *Michigan Law Rev.* 597 (1935).

[7] Chas. Uhden, Inc. v. Greenough, 43 P. (2d) 983, 988 (April, 1935). In the companion case of Griffiths v. Robinson, 43 P. (2d) 977, 979, decided the same day, the court erroneously stated that in the Uhden case it had *held* this section of the act unconstitutional. Neither case involved a national code.

[8] Darweger v. Staats, 196 N. E. 61 (April, 1935).

might be subject to different forms of regulation, and a business man might be called upon to decide at his peril to which rules he was subject. . . . It has itself determined that the remedy to be tried is the application to business within the state of the same rules and regulations which the federal authorities apply nationally . . . The attack upon the method is merely an indirect attack upon the policy of uniform standards."

On the day following this decision, the federal Supreme Court, in Schechter Poultry Corp. v. United States,[9] invalidated the entire code sections of the national act. There being no legally existent codes for the states to adopt, the question became moot.[10] It continues, however, as to licensing agreements adopted under the Agricultural Adjustment Act. In Smithberger v. Banning,[11] the same line of reasoning was used to invalidate a Nebraska appropriation act intended to furnish the necessary funds to take advantage of the grants-in-aid sections of the Social Security Act, which was still pending in Congress at the time when the state law was passed. A unanimous court held: "The enactment of law is one of the high prerogatives of a sovereign power. It would be destructive of fundamental conceptions of government through republican institutions for the representatives of the people to abdicate their exclusive privilege and obligation to enact such laws . . . To term such a method of legislation . . . vicious is to indulge in mild criticism . . . The legislature cannot delegate the sovereign powers of the state to an administrative or executive authority of a foreign jurisdiction."

Delegation of Legislative Power to the Administration. Even prior to the Schechter case, the state courts had uniformly rejected the provisions of their own industrial recovery and agricultural adjustment acts for codes and licensing agreements promulgated under state authority. The Washington cases discussed in the preceding section had held such codes unconstitutional, while the Wisconsin court had reached a similar conclusion at a still earlier date.[12] The Ohio, Oregon, and Colorado acts met a similar fate in the order named,[13] the Oregon court stating: "It is impossible to conceive of a more complete delegation of legislative power" than that contained in an act which "leaves wholly to persons outside of the legislature the power to determine whether there shall be a law at all and if [so], what the terms . . . shall be." The Washington act was amended in

[9] 295 U. S. 495 (1935), discussed in this REVIEW, Vol. 30, p. 58.

[10] See *Ex parte* Downing, 47 P. (2d) 322 (Cal. App., June, 1935).

[11] 262 N. W. 492, 497 (Nebr., Sept., 1935).

[12] Gibson Auto Co. v. Finnegan, 259 N.W. 420 (March, 1935), discussed in this REVIEW, Vol. 29, p. 611.

[13] State v. Dusha, 198 N. E. 735 (Ohio App., Jan., 1935); Van Winkle v. Meyer, 49 P. (2d) 1140 (Ore., Oct., 1935); *In re* Interrogatories of the Governor, 51 P. (2d) 695 (Colo., Oct., 1935).

an effort to overcome these decisions, but to no avail.[14] An amended Wisconsin act, however, was permitted to stand.

The original Wisconsin act provided that codes should be promulgated only for industries in which one or more groups had so requested, and then only if it appeared to the governor that the code's terms were "approved by a preponderant majority of persons" engaged in the industry. The court had held that this constituted a delegation of legislative power to private individuals. The 1935 amendment vested complete authority in the governor, thus bringing the act into line with those which had been held unconstitutional in other states. Yet the court unanimously capitulated. The opinion[15] presents a strange line of reasoning, the chief justice writing: The phrase "unfair methods of competition in business and unfair trade practices" is essentially identical to the so-called "standard" in the national act; in the Schechter case, the Supreme Court properly held that such a phrase is too indefinite; the same tests should be applied under the state as under the federal constitution; the legislature passed this amendment with the Schechter opinion and the state constitution before it, and must be assumed to have undertaken to comply with their requirements; the act is constitutional. Is this an example of the "recall of judicial decisions" in the home state of the late United States senator who pleaded so eloquently for such an institution? But it must be added that the court hinted that many code provisions might be vulnerable to attack under the federal and state "due process" clauses.

Although the best opinions were written in the "code" cases, other statutes met a similar fate. Nebraska appropriated $4,000,000 to a "state assistance committee" for direct and work relief, the committee obviously being modelled after the national P.W.A. The entire act was held void because it vested "an arbitrary and unrestricted discretion" to allocate the money "to any of the purposes set forth" in it.[16] The Arizona court held that although the governor can be permitted to allocate money from the general fund for use in defending tax suits, the act permitting him to do so was unconstitutional because it failed to set a maximum.[17] On the other hand, the Colorado economy act of 1933 had better luck, the court holding that neither the separation of powers nor a constitutional provision that employees in the "classified service" shall "hold during efficiency" prevents the legislature from authorizing the governor, in case the state's revenues are insufficient, to "suspend functions or

[14] State v. Matson Co., 47 P. (2d) 1003 (July, 1935). The court held that all rules governing the payment of assessments to support code enforcement fell with the act, and that middlemen might retain all sums deducted to meet such assessments from payments made to producers.

[15] *In re* State, 264 N. W. 633 (Jan., 1936).

[16] Smithberger v. Banning, *supra* note 11.

[17] Crane v. Frohmiller, 45 P. (2d) 955 (June, 1935).

services" in any department for a period not to exceed six months.[18] There was the normal run of cases sustaining the right of administrative officers to "fill in the details" of relatively complete statutes and of some which were none too complete.[19]

Delegation of Legislative Power to Property Owners. A city ordinance of Zanesville, Ohio, provided that one desiring to erect a gasoline station must first secure "the written consent of 51 per cent of the property owners within a radius of 600 feet." The opinion pointed out that "there has been a great conflict of decisions among the courts of this country upon this legal question, many courts holding that consents similar to those required in the ordinance constitute a delegation of legislative power. Others take a different view and hold there is no such delegation." Prior Ohio decisions had followed the former view, but the court unanimously held that these should be reversed and the ordinance sustained.[20]

The Courts and Martial Law. The chief conflict over the competing scope of executive and judicial powers concerned authority to declare martial law and the effect of its proclamation upon the jurisdiction of the courts. When a Terre Haute employer replied to the peaceful picket established by his striking employees by importing from Chicago strike-breakers who were deputized as guards, the unions replied with a general strike ("labor holiday"). Although the courts "were open and transacting regular business," the governor, at the request of local officials, proclaimed martial law. Picket lines were ordered to disband, assemblages were forbidden, and certain persons were arrested and detained without trial. The federal district court for the southern district of Indiana held that the legislature may rightfully authorize the governor to declare martial law "whenever it shall be made to appear" to him "that there is a breach of the peace, riot, or resistance to process of this state, or imminent danger thereof;" that "the evidence justifies the conclusion that he exercised a wise discretion in this instance;" and that "if it becomes necessary to imprison a person, to . . . deny him the right of habeas corpus . . . in order to restore law and order, the military authorities are given that power . . . Such arrests are not necessarily for punishment, but are by way of precaution." It added that only "arbitrary and capricious acts . . . having no relation to the necessities of the situation, may be enjoined."[21]

[18] Getty v. Gaffy, 44 P. (2d) 506 (April, 1935).

[19] State v. Grosjean, 161 So. 871 (La., April, 1935), is particularly interesting because the "standard" by which the governor was to be guided was virtually identical with that of the recovery acts. And see Wiseman v. Phillips, 84 S. W. (2d) 91, 94 (Ark., June, 1935); State v. Stark, 52 P. (2d) 890 (Mont., July, 1935); Acme Refining Co. v. State, 86 S. W. (2d) 507 (Tex. Civ. App., Sept., 1935); State v. Yelle, 48 P. (2d) 573 (Wash., Sept., 1935).

[20] State v. Combs, 194 N. E. 875 (March, 1935).

[21] Cox v. McNutt, 12 F. Supp. 355 (Oct., 1935).

The South Carolina court held it "to be accepted law that the action of the governor in declaring that a state of insurrection exists may not be enjoined by this court, nor reviewed by it." But the further contention that "none of the acts of the governor, done after the proclamation which declares the existence of a state of insurrection, may be inquired into" was rejected, the court stating that this rule applies only in time of actual war or "conditions of riot and violence approaching a state of internal war." It seems that those in charge of the highway department had refused to resign or to permit their purported successors, appointed by the governor, to take over the affairs of the department. Instead of removing them for cause after due notice and hearing, the governor chose the more spectacular method of seizing control by use of machine guns. The highway commission, branded an "unlawful assemblage," continued to conduct its business by telephone. It then sought to enjoin the governor's appointees from acting as officials of the department and the banks in charge of the department's funds from honoring warrants signed by these appointees. The court found that at the time martial law was declared "all was as calm, quiet, and peaceful as a May morn," while it is settled that "martial law cannot prevail in times of peace, and while the courts are open and functioning." Having sustained the proclamation of the existence of insurrection, it held the decree of martial law void (because there was no insurrection?) and granted the injunctions.[22]

II. INTERGOVERNMENTAL RELATIONS

The Nation and the States. The most interesting problem of federal relations has already been discussed in the preceding section. Apparently our state courts intend to continue treating the national government as a "foreign sovereignty," in spite of the prophecy in Number 82 of *The Federalist* that they would "consider the state governments and the national government as they truly are, in the light of kindred systems, and as parts of *one whole*." This "foreign sovereignty" view has played a particularly important rôle in the field of criminal law, serving as justification for successive national and state prosecutions[23] and kindred rules in allied fields.[24] Several states have undertaken to forbid successive prosecutions by statutory provisions authorizing a conviction or acquittal in a federal court to be pleaded in bar to a state prosecution for "the same

[22] Hearon v. Calus, 183 S. E. 13 (Dec., 1935).

[23] See my "The Lanza Rule of Successive Prosecutions" (1932), 32 *Columbia Law Rev.* 1309.

[24] See my "The Bill of Rights and Criminal Law Enforcement" (1934), 175 *Annals Amer. Acad.* 205, and "Immunity From Compulsory Self-Incrimination in a Federal System of Government" (1934–35), 9 *Temple Law Quar.* 57, 194.

offense." Griffin v. State[25] shows how impossible it is for a state to accomplish this purpose in the absence of a complementary national statute. Griffin was arrested by the federal authorities, charged with the illegal sale of narcotics. He was released on bail pending trial, and on the following day he was arrested by the state authorities and brought to trial under the state law. His plea that a case was pending against him under the national law was ineffective, among other reasons, because he had not yet been in jeopardy under that law.

State v. Irby[26] furnishes an interesting departure from the standard run of cases. The Arkansas constitution provides that "no person hereafter convicted of embezzlement of public money . . . shall be . . . capable of holding any office of trust or profit in this state." Irby was convicted of embezzling the funds of a post-office, and was subsequently pardoned by President Hoover. Over the dissent of three judges, who insisted that a "foreign" conviction does not count, and that in any case the pardon had "removed all consequences arising out of it," the majority held that the defendant was ineligible for a position as state judge. The effect of the pardon was measured by the scope of the pardoning power of the governor rather than that of the President.

A Maryland ruling that the state can tax the R.F.C.[27] raises an interesting question of state-federal relations, although it is one which can be settled authoritatively only by the federal Supreme Court. The judges ventured the opinion that the immunity of the federal government and its agencies from state taxation is no broader than that of the state and its agencies from federal taxation, and that the R.F.C. is "engaging in businesses which constitute a departure from usual governmental functions." The opinion gives an interesting analysis of the present unsettled state of the law.

The P.W.A. has occasionally been embarrassed by lower federal court rulings somewhat analogous to those concerning the N.R.A. and A.A.A. discussed in the preceding section. In making loans and gifts to municipalities for the construction of electric utilities, it has generally required the municipal authorities to sign a contract agreeing to P.W.A. supervision of the construction of the plant, including the approval of plans and the purchase of materials. District Judge Lindley concluded that such an agreement constitutes an illegal delegation of municipal authority to other than municipal officials, and that it also violates an Illinois re-

[25] 46 P. (2d) 382 (Okla. Cr., June, 1935).

[26] 81 S. W. (2d) 419 (Ark., May, 1935). There being no federal question involved, a writ of certiorari was refused. 56 Sup. Ct. 136 (1935).

[27] State Tax Commission v. Baltimore National Bank, 180 A. 160 (June, 1935), sustained, but on different grounds, in 56 Sup. Ct. 417 (1936).

quirement of "free competitive bidding" on all public contracts.[28] District Judge Raymond indicated an acceptance of the same views in the Menominee (Michigan) case.[29] Apparently, no state court has passed upon the question.

Interstate Rendition. Martin had been convicted of felony in a Texas court and sentenced to nine years in the state penitentiary. At the request of the federal government, and before starting to serve this sentence, he was handed over for trial for conspiracy to rob the United States mails. Being convicted, he was taken to Kansas to serve a two-year term in the federal penitentiary at Leavenworth. When his time was up, he was arrested by the Kansas authorities for return to Texas. He insisted that "having been taken from the state of Texas to the state of Kansas by federal officers against his will and without his consent, . . . he is not a fugitive from justice and has a safe asylum in Kansas." The Kansas court, conceding that there are authorities for such a rule,[30] held that "to constitute petitioner a fugitive from justice, it was not necessary to show that he had voluntarily fled from the state of Texas . . . The reasons why he has left the demanding state are immaterial."[31] The decision marks a triumph of common sense over pedantic linguistics.

The State and Its Local Governments. Although it would seem to be unconstitutional, under existing rulings, for a state to adopt the future laws of the nation, it has long been customary in certain Southern states for a city to adopt the entire state criminal code as its own. Such ordinances appear to have been sustained uniformly except in so far as the state laws embrace offenses not within the legislative jurisdiction of the municipality. Previous ordinances have had one defect in that they have provided the same penalty for all offenses. Sconyers v. Town of Coffee Springs[32] involved a new form, providing that one convicted of violating the ordinance shall suffer the same penalty as that imposed by the state law at the time when the offense was committed. The ordinance was sustained with the single reservation that when the state penalty exceeds the maximum sentence possible under a city ordinance, the penalty will be void as to the excess. The opinion gives a satisfactory résumé of the present status of the Alabama law, although it fails to mention that the primary purpose of such ordinances is to evade the state constitutional

[28] Illinois Power and Light Corp. v. City of Centralia, 11 F. Supp. 874 (E. D. Ill., Aug., 1935).

[29] Menominee & Marinette Light and Traction Co. v. City of Menominee, 11 F. Supp. 989 (W. D. Mich., Aug., 1935).

[30] See *In re* Whittington, 34 Cal. App. 344 (1917).

[31] *Ex parte* Martin, 52 P. (2d) 1196 (Dec., 1935).

[32] 160 So. 552 (Ala., Dec., 1934). The ordinance was subsequently held void because it had not been published as required by law. 160 So. 549 (Ala. App., Feb., 1935).

guarantee against "double jeopardy" by validating successive state and municipal prosecutions.

Pacific coast states, having qualified the normal rule that statutes prevail as against conflicting municipal ordinances by providing that the ordinance will override the statute if it concerns a "municipal affair," have had considerable difficulty delimiting this elusive category. The Oregon court, reversing several earlier decisions, held that the regulation of motor traffic in cities is a "state affair."[33] A similar change of opinion had already taken place in California.[34] The procedure to be followed in opening and widening city streets was held to be a "municipal affair."[35]

Local option liquor statutes have normally given localities a chance to abandon state laws authorizing traffic in intoxicants in favor of prohibition. The repeal of the Eighteenth Amendment has given a new form to these acts. When the electorate of North Carolina refused to recommend the repeal of its state prohibition act, the seventeen counties with "wet" proclivities secured the passage of an act authorizing the voters of any one of these counties to legalize the sale of intoxicants. Although it would no longer seem possible to argue successfully that such an act is an unconstitutional delegation of legislative power to local governments, certain taxpayers thought that there were sufficient grounds under other clauses of the state constitution to warrant enjoining the spending of county funds for such an election. The court held that apart from the merits of the question an injunction will not lie, since the petitioners "have an adequate remedy at law by having indicted and prosecuted" those who attempt to take advantage of the provisions of the local option act, since "if the latter statute is unconstitutional, it will not avail as a defense."[36] The dissenting judge wrote one of the most interesting opinions of the year. The electorate, he pointed out, had twice voted in favor of prohibition, and consequently this act violates the mandate that "touch not, taste not, handle not for beverage purposes" shall be the motto of the state; it confers special privileges upon the seventeen "wet" counties which it denies to others; it was passed on the closing day of the session, by "common knowledge" after many members had gone home and all were "tired and worn," without having been read at length and an actual vote taken; the title is defective; the entire act is void because its provisions are indefinite and because it confers legislative powers upon the county liquor boards. The most interesting argument

[33] Winters v. Bisaillon, 54 P. (2d) 1169 (Feb., 1936).

[34] Helmer v. Superior Court, 48 Cal. App. 140 (1920), followed in *Ex parte* Daniels, 183 Cal. 636 (1920).

[35] City of San José v. Lynch, 52 P. (2d) 919 (Cal., Dec., 1935).

[36] Newman v. Watkins, 182 S. E. 453 (Nov., 1935), followed in Hill v. Board of Commissioners, 182 S. E. 709 (Dec., 1935).

is that although a prohibitory liquor act is a valid exercise of the police power, an act to legalize the traffic in intoxicants is unconstitutional because "it does not promote health, peace, morals, and good order or add to the wealth and prosperity of the state," and that consequently an act authorizing the calling of an election to accomplish such a purpose is void for the additional reason that it contemplates the spending of public funds for other than a "public purpose." The opinion is resplendent with sound advice, doubtful history, and interesting quotations from both poetry and prose, and is an excellent (although far from typical) answer to Jerome Frank's query, Are judges human?[37]

III. INDIVIDUAL RIGHTS: PROCEDURAL

As usual, most cases in this category dealt with the specific guarantees protecting the rights of persons accused of crime. One might suppose that at this late date the construction of such clauses as those concerning jury trial would be definitely settled, but such is not the case. Even the meaning of the provision that no one "shall be twice placed in jeopardy for the same offense" continues to cause dispute, while cases discussing the legality of a search and seizure and the right to use evidence secured by means of an illegal search continue to be legion. Only the most important can be considered here. They will be discussed in the order in which the question must be raised in court.

Search and Seizure. When the federal Supreme Court first intimated,[38] and then held,[39] that evidence secured through an illegal search by a governmental official is not admissible in a criminal action against the person whose rights were violated by the trespass, it engrafted upon the Fourth Amendment a rule which had been unknown to the common law. This new doctrine found immediate acceptance by state courts construing their own bills of rights, and is now the standard American rule. Its operation is well illustrated by three Oklahoma liquor cases. In Gatewood v. State,[40] the officers searched the defendant's home without a warrant. Their testimony was held inadmissible. In Seick v. State,[41] the search was held illegal, and the evidence inadmissible, because of typographical errors in both the search warrant and the affidavit upon which it had been issued. In Houchin v. State,[42] the policeman had a valid warrant, but by

[37] See his article under that title in 80 *Univ. of Penna. Law Rev.* 17, 233 (1931).

[38] Boyd v. United States, 116 U. S. 616 (1886).

[39] Weeks v. United States, 232 U. S. 383 (1914).

[40] 46 P. (2d) 962 (Okla. Cr., June, 1935).

[41] 48 P. (2d) 355 (Okla. Cr., Aug., 1935).

[42] 52 P. (2d) 1085 (Okla. Cr., Dec., 1935). And see Pickle v. State, 160 So. 909 (Miss., April, 1935), where the officer was on land owned by the defendant when he saw the still located on a second piece of land rented by him. The officer was held to

mistake handed the defendant the wrong paper. The fact that neither party was aware of this error until after the search was over was held not to cure the fatal defect that "no search warrant was served, as required by law."

As recently as 1905,[43] the federal Supreme Court repudiated the *dictum* of the Boyd case.[44] Later efforts to reconcile these opinions have given us the salutary rule that a motion to suppress the evidence must be made prior to trial unless the defendant is first apprised of the illegal search by facts coming to light in course of the proceedings.[45] In State v. Jackson,[46] the defendant fell afoul of this qualification, no motion for the return of the kodak picture and scrap of paper taken from his room and the suppression of their use as evidence having been made prior to their actual introduction. The opinion merits special emphasis because he scarcely could have known of the search, having hidden out in a different section of town. It may be significant that it involved rape rather than liquor.

Although pressure is brought each year to influence courts still following the common law rule that evidence is admissible however obtained to change to the new federal rule, none succumbed during the year 1935–36. Alabama, Connecticut, and Georgia expressly refused to do so.[47]

The advent of this new rule was accompanied by an increasing strictness in the rules forbidding searches without a warrant and the degree of proof necessary to secure such a warrant. Now that the rule is thoroughly established, it seems that a counter movement to soften the tests of legality is under way. People v. Mizzano[48] and May v. State[49] held that a warrant is not necessary if the defendant's wife consents to the search. If the search warrant has been lost, Texas will permit the justice who issued it to testify as to its contents.[50] The Washington court held that when a defendant is arrested as he is returning to his hotel, the arresting officers can go to his room and search it.[51] Even the fact that they had

be a trespasser because the search warrant had been issued upon insufficient evidence (an anonymous letter received through the mail).

[43] Adams v. New York, 192 U. S. 585.

[44] *Supra* note 38.

[45] See Weeks v. United States, *supra* note 39.

[46] 83 S. W. (2d) 87 (Mo., March, 1935).

[47] Oden v. State., 165 So. 404 (Ala. App., Jan., 1936); State v. Carol, 181 A. 714 (Conn., Dec., 1935); Fitzgerald v. State, 182 S. E. 77 (Ga. App., Oct., 1935).

[48] 196 N. E. 439 (Ill., April, 1935).

[49] 83 S.W. (2d) 338 (Tex. Cr., May, 1935).

[50] Brigman v. State, 82 S. W. (2d) 955 (Tex. Cr., May, 1935).

[51] State v. Thomas, 49 P. (2d) 28 (Sept., 1935): "Where the accused is arrested in his home or place of residence, a search of the home or place of residence may be lawfully made for evidence of his guilt. In this instance, the defendant was on his way to his place of residence when arrested, and the fact that he was caught before he reached the place ought not to require the application of a different rule."

searched his room prior to his return in order to assure themselves that they were after the proper party and that desired evidence was to be found there was held not to invalidate the second search. The Oregon court, holding that the failure of a suspected bootlegger to exchange salutations and the fact that the officer saw cartons containing bottles in the back compartment of the car constituted valid grounds for a search, stated: "The Constitution and the laws of the land are not solicitous to aid persons charged with crime in their efforts to conceal or sequester evidence of their iniquity."[52]

Speedy Trial. Under the Illinois constitution, a defendant is entitled to "a speedy public trial." Szobor was arrested and confined in jail on June 22, 1934, where he remained until taken to the penitentiary some six months later. He was indicted on October 10, and on November 30 he pleaded guilty to the charge of arson. Subsequently he asked to withdraw this plea in order to petition for discharge because of the delay in bringing him to trial. The court refused and sentenced him to the penitentiary for from one to twenty years. On appeal, the supreme court held that under Illinois law four months is the maximum delay; that "to give effect to the constitutional intent, the period fixed must date from the arrest and not from the time the indictment is returned," and hence that after October 22 the court was without jurisdiction "to accept any plea or to enter any judgment," its sole duty being to discharge the prisoner from custody.[53] Unless Illinois grand juries meet more frequently and act more expeditiously, it would seem that the police will be forced to declare vacation moratoriums on arrests.

Successive Prosecutions. No less an authority than Justice Story felt that it would be unconstitutional to grant a new trial to one convicted of crime, since this would place him in jeopardy a second time for the same offense.[54] We not only have rejected that rule, but in most jurisdictions it is possible, when the first conviction is set aside, to retry the defendant upon any count in the original indictment. The Florida court, however, continues to cling to the doctrine that a conviction of a lesser offense is an acquittal of the greater. In State v. Lewis,[55] the defendant was tried for first degree murder but convicted of murder in the second degree. He was granted a new trial because of errors in the selection of the jury. By a four to three vote, it was held that "it would amount to an unconstitu-

[52] State v. Christensen, 51 P. (2d) 835 (Nov., 1935). All of these states follow the rule that illegally secured evidence is inadmissible. The Oregon quotation, however, was taken from People v. Mayen, 188 Cal. 237 (1922), which rejected this rule as one unduly favoring the criminal.

[53] People v. Szobor, 195 N. E. 648 (April, 1935).

[54] United States v. Gilbert, 25 Fed. Cas. No. 15, 204 (1834).

[55] 160 So. 485 (March, 1935).

tional deprivation of the rights of the accused under Section 12 of the Declaration of Rights to again place such defendant on trial for murder in the first degree." The dissenting judges asked: "How can that which has been annulled be treated as valid to acquit the accused of one charge and void as a conviction on the other or lesser offense?"

People v. Burkhardt[56] held that one convicted of "being drunk in an automobile upon a public highway" cannot be prosecuted for driving an automobile "upon a public highway while under the influence of liquor," since "every element" constituting the former offense "is necessarily an element in" the latter offense. The court dodged all of the knotty problems arising under the California constitution because the first charge was brought under a county ordinance and the second under a statute.[57] The Tennessee court held that an acquittal of the charge of illegally transporting liquor does not bar an action *in rem* for the forfeiture of the liquor.[58]

Jury Trial. Although normally one accused of a major misdemeanor is entitled to a jury trial, in New York this guarantee has been restricted to felonies. Passage of an act regulating the sale of securities, violations constituting "misdemeanors" punishable by heavy fine and imprisonment at hard labor for not to exceed two years, caused the court to redefine the New York law. "The character of the offense," it stated, "is determined by the nature of the punishment rather than by its supposed moral turpitude . . . The provisions of the constitution requiring . . . a trial by jury relate to those crimes where the punishment may be in state's prison or by a longer term than one year in any prison."[59]

Many states have held, even apart from statutory authorization, that one entitled to a jury trial may waive this right and have his case tried by a judge alone.[60] But the North Carolina court held such a statute invalid.[61] On the other hand, the Minnesota court, which has previously sustained waiver,[62] held that when one juror is found, during the process

[56] 50 P. (2d) 97 (Cal. App., Oct., 1935).

[57] See my "Penal Ordinances in California" (1936), 24 *Calif. Law Rev.* 123, and "Municipal Ordinances Supplementing Criminal Laws" (1936), 9 *So. Calif. Law Rev.* 95.

[58] Caneperi v. State, 89 S. W. (2d) 164 (Jan., 1936). Compare Coffey v. United States, 116 U. S. 436 (1886). For an interesting discussion of the plea of *res judicata* as a supplement in criminal cases to the pleas of *autrefois acquit, autrefois convict, and former jeopardy*, see State v. Coblentz, 180 A. 266 (Md., July, 1935).

[59] People v. Bellinger, 199 N. E. 213 (Dec., 1935).

[60] See this REVIEW, Vol. 25, p. 980.

[61] State v. Camby, State v. Crump, and State v. Hill, 182 S. E. 715, 716 (Dec., 1935).

[62] See 20 *Calif. Law Rev.* 145, note (1932).

of the trial, to be ineligible, the parties may agree to complete the trial with eleven jurors.[63]

The courts continue to be solicitous of the defendant's right to an "impartial" jury. In State v. Guynn,[64] a striking member of the national miners union, convicted of riot, was granted a new trial because the foreman was a deputy sheriff appointed "to stop any members of the union from coming into Standardville," and he had expressed the opinion that such members were "a bunch of reds and ought to be run out of the country."

Procedure in Civil Cases. In a five to four decision, the Washington court sustained a statute providing that all "records, books, accounts, papers, and memoranda shall be subject to production and inspection" at the request of the tax commission.[65] The majority felt that the right of search is much broader in the case of taxation than in that of criminal prosecution. A 1933 Indiana statute providing that if a jury fails to agree within ten hours a five-sixths verdict may be accepted was held void,[66] such an impairment of the unanimity rule requiring a constitutional amendment. Other cases arising under the due process clauses are mentioned in the following section.

IV. INDIVIDUAL RIGHTS: SUBSTANTIVE

Retroactive Laws. In Wilson Banking Co. Liquidating Corp. v. Colvard,[67] the Mississippi court sustained a mortgage moratorium similar to the Minnesota act upheld in Home Building and Loan Assoc. v. Blaisdell.[68] Pointing out that "decisions of the Supreme Court of the United States construing provisions of the federal Constitution are not binding on a state court in construing similar provisions of its own state constitution," the majority added: "But we will not adopt the anomalous view that an act which does not contravene the contract clause of the federal Constitution does violate an identical provision of our own constitution, unless we are compelled to do so by reason of prior decisions of this court construing such provisions." The dissenting judge, arguing for a broader construction of the state clause, insisted: "The question involved in this case . . . is whether the constitution is a mere scrap of paper . . . To uphold this statute is to flaunt the constitution as a worthless thing."

Ohio, going far beyond the contract clause, provides that "the general assembly shall have no power to pass retroactive laws." In City of Cin-

[63] State v. Zabrocki, 260 N. W. 507 (April, 1935).
[64] 48 P. (2d) 902 (Utah, Sept., 1935).
[65] Gange Lumber Co. v. Henneford, 53 P. (2d) 743 (Jan., 1936).
[66] Coca Cola Bottling Works v. Harvey, 198 N. E. 782 (Dec., 1935).
[67] 161 So. 123 (April, 1935).
[68] 290 U. S. 398 (1934), discussed in this REVIEW, Vol. 29, p. 54.

cinnati v. Bachmann,[69] this was held to apply to local ordinances, and to forbid authorizing actions against the city because of deaths caused by police automobiles. In keeping with the rules of construction developed in contract cases, it was stated that although reasonable changes may be made in the remedy, substantive rights cannot be altered.

Freedom of Expression. Although it is entirely possible that the express guarantees of our state constitutions relative to freedom of speech and of the press will be held to impose more stringent limitations upon our state legislatures than those developed under the due process clause of the Fourteenth Amendment, there were no such cases during the year. The Florida court intimated that possibly a series of actions for criminal libel, if brought to intimidate the press, would be enjoined,[70] but found no such facts before it. The Kansas court correctly held that the publication of anonymous political pamphlets can be punished as criminal.[71] In Michigan, an attack upon a statute declaring the public displaying of a red flag *prima facie* evidence of its use "as an emblem of opposition to organized government," which is declared to be a felony, was unsuccessful, although a new trial was granted because of the admission of prejudicial testimony.[72]

Due Process. On March 5, 1934, the federal Supreme Court sustained regulation of the price of milk.[73] In the following November, the Virginia court, in one of the most interesting opinions of recent years,[74] struck down its state statute as violating the state constitution. But on March 29, 1935, following a rehearing, four of the seven judges voted to overrule this decision and sustain the law.[75] However, although pointing out that the provisions of the Virginia and federal constitutions "are quite similar," and hence that "if it does not offend the federal Constitution, then it will not offend the Virginia constitution," they expressly refused to commit themselves to "the broad views" advanced in the Nebbia opinion. The dissenting judges voted to stand by those "inherent and inalienable rights" which "would still be protected had they never been named" in the constitution, and without which "organized society, as we

[69] 199 N. E. 853 (Ohio App., April, 1935).

[70] Annenberg v. Coleman, 163 So. 405 (Oct., 1935).

[71] State v. Freeman, 55 P. (2d) 362 (March, 1935). As counsel based their claim under the federal Constitution on the First Amendment rather than the Fourteenth, there is no appeal from this decision. There were dozens of similar errors during the year. Apparently Barron v. Baltimore, 7 Peters 243 (U. S., 1833), is still relatively unknown to the profession.

[72] People v. Immonen, 261 N. W. 59 (May, 1935).

[73] Nebbia v. New York, 291 U. S. 502, discussed in this REVIEW, Vol. 29, p. 45.

[74] Reynolds v. Milk Commission, 177 S. E. 44, discussed in this REVIEW, Vol. 29, p. 621.

[75] 179 S. E. 507.

know it, would be impossible." The opinions are well worth the time of any person still laboring under the delusion that in "police power" cases the judges go to the written documents for the tests of legislative power. A lower Pennsylvania court has held a state milk control act void,[76] so that the issue must soon come before the supreme court of the state. Wisconsin's court sustained its statute.[77]

Gormley v. Walton[83] illustrates the tremendous importance that personalities often play in due process cases. In 1922, the Georgia court, by a four to two vote, held that the legislature can validly authorize the superintendent of banks to make a final determination of the need for an assessment upon the stockholders of an insolvent bank.[84] One member of the majority then left the bench, and the court promptly divided three to three on this question.[85] Twelve years later, after a second member of the original majority had been replaced, the first ruling was reversed, the new majority explaining that it "is not binding [because it] did not receive the concurrence of all of the judges"—a defect from which this latest ruling suffers to the same degree. During all this time, not a single judge altered his original position. In Stierle v. Rohmeyer,[86] the Wisconsin court, after a complete change of personnel, reopened (apparently virtually on its own motion, as the issue had not been raised in the court below) the question of the validity of a penalty clause in its mortgage act, and held it void.

Equal Protection. The Texas court of criminal appeals invalidated an anti-handbill ordinance which exempted newspapers and political advertising pertaining to public offices. Although conceding that a city has the right "to prohibit the scattering of paper of all kinds . . . to prevent an unsightly appearance and fire hazards," it held that "the ordinance is discriminatory in that it grants special privileges to those who scatter waste paper, wrapping paper, circulars . . . of a political nature, . . . [which are] as combustible without advertisements as with them."[87]

Maine provided that operators of milk-gathering stations must give bond guaranteeing payment of all obligations arising from the purchase of dairy products. The act was copied from a New York statute which has been sustained by the state court,[88] and by implication by the federal Supreme Court.[89] It was held invalid, two judges dissenting. Although

[76] Rohrer v. Milk Control Board, 184 A. 133 (March, 1936).
[77] State v. Lincoln Dairy Co., 265 N. W. 197 (Feb., 1936).
[83] [No footnotes 78–82] 180 S. E. 220 (Ga., May, 1935).
[84] Bennett v. Wheatley, 154 Ga. 591.
[85] Bennett v. Schwartz, 154 Ga. 885. (1923).
[86] 260 N. W. 647 (April, 1935).
[87] *Ex parte* Johns, 88 S. W. (2d) 709 (Dec., 1935).
[88] People v. Perretta, 253 N.Y. 305 (1930).
[89] Nebbia v. New York, 291 U. S. 502, 522 (1934).

intimating that any such act would be an unconstitutional interference with "the pursuit of happiness," the majority placed its ruling upon the ground that the act discriminates "between milk producers selling to gathering stations . . . and producers of perishable fruits and vegetables selling to wholesalers," and added: "Why is the statute selective in its application? What, as a practical matter of cold fact, with respect to security for pay, is the real difference between the vendor supplying gathering stations and any other vendor of milk? Why not equal rights among milk vendors? . . . The answer is not evident in the statute."[90] The last sentence is particularly significant because it reverses the normal presumption of the existence of factual conditions supporting the legislation, and was severely criticised by the minority.

Other cases are discussed in the section on taxation.

Eminent Domain. The guarantee that "private property shall not be taken for public use without just compensation" fails to provide for one whose property is injured by the change in the grade of a street or other public improvement. Consequently, many state constitutions have been amended to read "taken or damaged." Parker v. State Highway Commission[91] held such a constitutional provision to be self-executing. St. Louis-San Francisco Ry. Co. v. Matthews[92] held that it enables a homeowner, without proof of negligence, to sue a railroad for injury due to vibration. But an effort to extend it to include governmental liability in tort failed.[93] On the theory that the public is entitled to know in advance "what damages, if any, will have to be paid by reason of the improvement," a California court of appeal held that property-owners who intend to enter claims may be required to do so within a fixed time following notice of the proposed improvement.[94]

A few constitutions require that when part of a property is taken the owner shall be paid its full value irrespective of any benefit to the remainder from the proposed improvement. Quinn v. State[95] is an excellent example of the miscarriage of justice which may result from such a rule.

V. FISCAL POWERS

Taxation.[96] When Wisconsin sought to levy a graduated gross sales tax upon all operators of two or more retail stores, the state supreme court

[90] State v. Old Tavern Farm, 180 A. 473 (July, 1935).
[91] 162 So. 162 (Miss., May, 1935).
[92] 49 P. (2d) 752 (Okla., Sept., 1935).
[93] Born v. Fulton County, 181 S. E. 106 (Ga. App., July, 1935).
[94] Snoffer v. City of Los Angeles, 43 P. (2d) 852 (May, 1935); McCandless v. City of Los Angeles, 47 P. (2d) 1103 (Aug., 1935).
[95] 49 P. (2d) 98 (Okla., Sept., 1935).
[96] See the cases discussed *supra*, pp. 699, 706.

held that this violates both the state and federal constitutions.[97] Similarly, the Georgia court held that both constitutions forbid a higher tax upon "cash and carry" stores than upon those doing a delivery and credit business.[98]

The Arkansas 2 per cent sales tax of 1935 provides that articles sold for use in other states shall bear the rate of sales tax of such other state, and that where adjoining cities or towns are separated by a state line, the tax "shall be at the same rate as provided by law in such adjoining state, if any, not to exceed the rate provided in this act." The court sustained the tax as an excise rather than property tax, and hence one which need not be uniform throughout the state.[99] The chief justice, dissenting, insisted that "the sales tax is a property tax beyond question, cavil, or doubt." He seized upon this opportunity to express his opposition to a graduated tax upon income or inheritance, arguing that the decisions of his court sustaining such taxes were "true hybrids, the offspring of illogic and misnomer," and had overturned "the wisdom of the ages." A second judge concurred in this dissent.

Spending.[100] Since taxation can be only for a "public purpose," it follows that the funds raised by taxation can be spent only for such a purpose. But an attempt to convince the Utah court that such moneys cannot be used to establish a system of state liquor dispensaries was unsuccessful.[101] The North Carolina court not only held that a contract with a private hospital for the care of the indigent sick is for a "public purpose,'" but also that it contemplates a "necessary expense" of the county[102] or city,[103] and hence does not require confirmation by the electorate. The latter ruling necessitated the reversal of previous decisions, the majority explaining that "it is not to be expected, in the changed conditions which occur in the lives of progressive people, that things deemed unnecessary in the government of municipal corporations in one age should be so considered for all future time." They added that "the judicial branch of the government has probably stood by former decisions from too conservative a standpoint," and that "this conservatism . . . , outgrown by the march of progress, sometimes appears as a serious disadvantage." The chief justice wrote a vigorous dissent in which he contended that an emergency, far from justifying a departure from

[97] Schuster & Co. v. Henry, 261 N. W. 20 (June, 1935); certiorari denied, 56 Sup. Ct. 148 (1935). Cf. Stewart Dry Goods Co. v. Lewis, 294 U. S. 550 (1935).

[98] City of Douglas v. South Georgia Grocery Co., 179 S. E. 768 (April, 1935).

[99] Wiseman v. Phillips, 84 S. W. (2d) 91 (June, 1935).

[100] See the case discussed *supra*, p. 7.

[101] Riggins v. District Court, 51 P. (2d) 645 (Nov., 1935).

[102] Martin v. Board of Commissioners of Wake County, 180 S. E. 777 (June, 1935).

[103] Martin v. City of Raleigh, 180 S. E. 786 (June, 1935).

established principles, calls for added vigilance, since "the Constitution is the protector of all the people. It stands as their shield and buckler in fair weather and foul; and, in periods of panic and depression, it is to them 'as the shadow of a great rock in a weary land, a shelter in the time of storm'."

The Massachusetts court is notorious for enforcing a narrow view of the scope of the spending power. In an advisory opinion regarding a pending bill, it continued this tradition by unanimously ruling that tax funds cannot be used to insure banks against loss on home mortgages or to make construction loans through a state corporation.[104] Chicago was forbidden to redeem tax anticipation warrants where the taxes anticipated had not materialized, the court concluding that since holders of such warrants had no legal claim against the city, such an instance of public largess would amount to an appropriation of money for a non-corporate purpose.[105] Cleveland was permitted to operate a garage and parking station for the use of city employees and patrons of the city stadium when "used properly and lawfully for public gatherings," but was forbidden to conduct a general garage business.[106]

State v. Smith[107] involved a slightly different set of facts which completely altered the legal situation. The city of Excelsior Springs, Missouri, is a widely known health resort abounding in mineral springs. It undertook to borrow $626,000, mostly from the P.W.A., to acquire title to all of these springs and construct and operate bath houses, mineral water vending houses, and the like. The sole security for the bonds was to be a first mortgage upon this property. Although pointing out that the test of "previous custom" must not be applied rigidly lest it interfere with progress, the court stated that, since no debts arising from the undertaking could be a charge against the tax revenues of the city, it was unnecessary to decide if it was for a "public purpose."

The Ohio court, although conceding that "by reason of implied constitutional limitations, an excise must not exceed the reasonable value of the privilege conferred," held that "there is no constitutional provision requiring the legislature to apply an excise exclusively for the use and benefit of those who pay it." The decision[108] sustained diverting a large part of the revenue from motor vehicle license fees and the gasoline tax to the support of public libraries, education, poor relief, etc.

Contesting Appropriations. The doctrine that neither a state nor a tax-

[104] Opinion of the Justices, 195 N. E. 897 (May, 1935).

[105] Berman v. Board of Education of City of Chicago, 196 N.E. 464 (Ill., April, 1935).

[106] City of Cleveland v. Ruple, 200 N. E. 507 (Ohio, Feb., 1936).

[107] 82 S. W. (2d) 37 (Mo., April, 1935).

[108] Calerdine v. Freiberg, 195 N. E. 854 (May, 1935).

payer has a proper standing in court to contest the validity of a national appropriation drawing upon the general fund[109] has raised an almost insurmountable possible barrier to judicial control of congressional spending. This difficulty does not exist as to municipal corporations,[110] and state courts have quite generally permitted taxpayers' suits, even where state appropriations are concerned.[111] The Georgia court, however, reaffirmed its ruling that a suit to enjoin state officers (in this case, the treasurer, comptroller-general, and regents of the state university) is a suit against the state, and hence cannot be maintained without the consent of the state.[112] The North Carolina court held that "if this expense is to be met from the general funds already collected, the plaintiffs will not be called upon to pay taxes for this purpose," and hence will suffer no injury.[113] It apparently overlooked the obvious fact that they will be required to pay taxes to replenish the general fund.

[109] Massachusetts v. Mellon and Frothingham v. Mellon, 262 U. S. 447 (1923). See the present writer's analysis of this whole problem in "Commerce, Production, and the Fiscal Powers of Congress" (1936), 45 *Yale Law Jour.* 751, 991.

[110] For current examples of taxpayers' suits, see the cases cited *supra*, notes 102, 103, 105, 106; McGinty v. Pickering, 179 S. E. 358 (Ga., March, 1935); Behrle v. Board of Education of St. Bernard, 200 N. E. 523 (Ohio App., June, 1935).

[111] Smithberger v. Banning, *supra*, note 11, was such a suit.

[112] Ramsey v. Hamilton, 182 S. E. 392 (Oct., 1935).

[113] Newman v. Watkins, 182 S. E. 453 (Nov., 1935).

Publicity of Campaign Expenditures on Issues in California. Publicity of campaign funds spent for and against proposed constitutional amendments, initiative and referendum measures, and other propositions voted on by the electorate of the state is the object of a California statute adopted in 1921 and revised in 1923.[1] This is one of the few statutes specially designed to deal with campaign funds on issues rather than candidates, and its operation is a matter of particular interest to students of campaign finance in that it represents a relatively successful effort to compel publicity of expenditures by non-party organizations. All reports under the act have been made by well established pressure groups, corporations, or temporary committees representing interest groups lacking permanent secretariats. The act is broad enough to apply to party committees, but no reports have been made by such agencies, presumably because of their inactivity in this type of campaign.[2]

Those associations which receive or disburse in excess of $1,000 for expenses in campaigns to influence the electors for or against any issue voted on throughout the state are required to make three reports to the secretary of state. The first report must be made not more than 45 nor less than 40 days prior to an election, the second not more than 12 nor less than 7 days prior to an election, and the final one within 30 days after an election. The reports must contain a statement of total receipts and the names and addresses of contributors of more than $25, and the total expenditures with the name and address of each person to whom more than $10 has been paid. The second and third reports are required to contain recapitulations of the prior statements.

The extent to which reports have been made under the statute may be seen from the data presented in Table I, which is based on an examination of the returns on file in the office of the secretary of state. The fact that reports of expenditures were made on only 21 of the 124 constitutional amendments and other issues submitted to the electorate by the

[1] *Stats.*, 1921, Chap. 583; 1923, Chap. 391.

[2] The full definition of those required to make reports is as follows: "Any person and any committee, firm, association, public or private corporation or other group of persons, whether incorporated or not, that collects, raises, or receives moneys or receives promises of money aggregating from all sources a sum in excess of one thousand dollars, or that expends his, its, or their own money or funds, in excess of one thousand dollars . . . . " *Stats.*, 1923, Chap. 391, sec. 1. The phrase "or that expends his, its, or their own money or funds" was added in 1923, after the contention had been made before a senate committee investigating the operation of the act that concerns spending their own money in a campaign did not come within the terms of the law. This committee was under the chairmanship of Senator Herbert C. Jones, and will be referred to herein as the Jones Committee. For its report, see California *Senate Journal*, 1923, pp. 1780–88.

TABLE I

NUMBER OF MEASURES ON WHICH REPORTS OF RECEIPTS AND EXPENDITURES WERE FILED, 1922–1934, INCLUSIVE

Type of Measure	*Total Number Voted On*	*Number on which Reports were Filed by*			
		Both Proponents and Opponents	*Proponents Only*	*Opponents Only*	*Neither*
Constitutional Amendments and Other Measures of Legislative Origin	124	2	16	3	103
Initiated Acts and Constitutional Amendments	46	17	12	4	13
Referenda	9	7	0	2	0
Total	179	26	28	9	116

legislature during this period is not so serious an omission as may appear. In all probability, very few campaign agencies interested in ordinary constitutional amendments spent more than the statutory minimum and failed to report. Most of these amendments do not affect interests adversely enough to arouse a great deal of anxiety as to whether they are accepted or rejected. Those questions upon which reports of expenditures were made dealt mainly with bond issues and tax measures in which some specific group was immediately concerned.[3] Advocates and opponents of ordinary constitutional amendments appear to rely almost solely upon the official publicity pamphlet to present their case to the electorate.[4] Reports concerning expenditures were made on a much larger proportion of initiated constitutional amendments and statutes than of measures submitted by the legislature. On over two-thirds of the initiated propositions,

[3] Comparison of reports of expenditures on constitutional amendments of legislative origin and on referenda on statutes in Table I and of expenditures on the two types of measures in Tables III and IV furnishes a very good index of the efficacy of the two-thirds rule for submission of constitutional amendments in protecting established interests and vested rights. Under a system where 14 of 40 senators can dictate constitutional content, it is indeed a weak and inconsequential interest that cannot ordinarily check in the legislature proposals for constitutional amendment seriously detrimental to itself.

[4] The cost of promoting constitutional amendments before the legislature, of course, does not appear from these reports. This may be not inconsiderable.

reports were filed by both proponents and opponents or by one of them. More money is spent on initiated measures than on those submitted by the legislature because, by means of the initiative, questions of genuine importance to the affected groups may be brought before the electorate. Of the 13 initiated propositions on which neither opponents nor proponents reported, probably only three or four constituted very serious omissions.[5] Among the 12 initiated propositions on which reports were made only by the initiators, only a few serious omissions were noted. Utility concerns and their agents failed to report expenditures of some $500,000 against a proposed state water and power system in 1922. There was some doubt, however, as to whether these omissions came under the terms of the statute as then worded. No report of Southern California groups opposing the "federal plan" of apportionment of the state legislature, voted on in 1926, appears to be on file.[6] In three of

[5] The initiated propositions on which reports were made by neither proponents nor opponents were the following:

1922: No. 10, providing for the taxation of publicly owned utilities.
No. 11, providing for the regulation of publicly owned utilities.
No. 12, creating a state budget system. The Jones Committee found that $6,548.08 had been spent in support of this proposal.
No. 30, giving the Railroad Commission power to grant franchises to transportation utilities using streets and highways.
1926: No. 17, permitting the use of the Bible in the public schools.
No. 20, providing for reapportionment of the legislature according to population. Expenditures against this were probably included in reports of expenditures for a proposition embodying the federal plan of apportionment considered at the same election.
1928: No. 21, prohibiting rodeos, bull-dogging, etc.
1932: No. 2, providing for state liquor control. Expenditures for this measure were probably included in reports concerning expenditures for a measure repealing the state prohibition enforcement act.
1934: Nos. 3, 4, 5, and 6, a series of measures relating to judicial reform initiated by a combination of civic organizations. Probably very little was spent in opposition to these measures.
No. 13, providing for local option. Expenditures against this were presumably included in reports of expenditures in favor of another measure relating to liquor. It is probable that the local option measure was initiated without a large cash outlay.

[6] The initiated measures upon which reports were made by proponents but not by opponents were:

1922: No. 1, validating an issue of veterans' aid bonds. Probably no expenditures of any consequence were made against this proposition.
No. 19, creating state water and power system. The expenditures against this measure were brought to light by the Jones Committee.
1924: No. 7, legalizing boxing and wrestling.
No. 1, reducing taxes on highway transportation companies.
1926: No. 28, adopting the federal plan of apportionment.

the four instances in which reports of expenditures on initiated constitutional amendments and statutes were made by the opponents but not by the proponents, there were probably violations of the statute.[7] In general, however, it must be concluded that reports have been made on most of the issues on which it is likely that considerable sums have been expended. Whether all agencies spending over the minimum reportable sum have reported is, of course, doubtful. The groups against whom the statute was originally directed have most scrupulously filed reports. Since the investigation by the Jones Committee, the utilities have filed detailed reports. The anti-prohibitionists, associations of banks and trust companies, petroleum associations, medical societies, bus associations, prize fight promoters, racing interests, and contractors' groups have all filed reports. On the other hand, reports have not been received when it might be expected that they would be filed by reform groups and "freak" organizations of various types. The anti-vivisectionists, the anti-prize fighters, the anti-liquor forces, the less scrupulous wing of the chiropractors, the naturopaths, the advocates of Bible reading in the schools,[8] the anti-rodeo groups, the anti-racing groups, are conspicuous by their failure to report. Such groups, however, can make a rather effective campaign without handling a great deal of cash.

The statute, as has been noted, requires the first report to be made not more than 45 nor less than 40 days before the election. This requirement was added in 1923 on the theory that better publicity would result. It is doubtful whether this requirement has served a very useful purpose, for almost two-thirds of the reporting agencies have failed to file this report. Occasionally, subsequent reports contain statements to the effect that no expenditures were made prior to 40 days before the election, and

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1930: No. 10, weakening the usury law. In all likelihood very little was spent against this measure.
No. 14, adopting permanent registration. Doubtless the expenditures against this proposition were small.
1932: No. 1, repealing the state prohibition enforcement act.
No. 5, legalizing racing.
1934: No. 2, "liberalizing" liquor laws.
No. 7, strengthening the state civil service law.
No. 11, making the state board of education elective.

[7] Expenditures in favor of No. 27, 1922, to weaken the initiative, it developed, were included in the report of expenditures against the single-tax proposal of the same year. No reports of expenditures were found on file from the proponents of No. 28, 1922, prohibiting vivisection; No. 9, 1934, loosening restrictions on chiropractors; No. 17, 1934, providing for the licensing of "naturopaths."

[8] A form-letter of the Bible Protective Association, under date of October 21, 1926, soliciting funds and enclosing a circular, stated: "One million of these are already in the mail, with one million more on the press." No report of expenditures in the organization's campaign of that year could be found on file.

doubtless the same was the case in other instances even though no mention was made of the fact.

The second report, filed immediately prior to the election, is the important one from the standpoint of publicity. Over two-thirds of the reporting agencies filed this statement. The omission of this report by the others was due to ignorance of the law in some cases, or to the fact that expenditures had not yet been made,[9] and, perhaps in other instances, to a deliberate intention to conceal financial data until after the election.[10] Late filing of the second pre-election statement may be as effective in preventing publicity as complete failure to file. Reference to Table II shows that about one-third of the second reports were filed late. Seven of the 31 late reports were filed after the election. Most of the others were only a day or so late. Examination of the cases in which the second report was tardily filed seemed to lead to the conclusion that ignorance of the law must have been the primary factor in those cases in which the delay was inordinate.[11] The final reports, due within 30 days after the election, are usually filed promptly and no great harm is done if they are a few days late.[12]

[9] Seven reporting agencies stated in their final report that this was the reason for their omission of the second report.

[10] Among the cases in which no second report was found when it is reasonable to suppose that one should have been made were:

1926: The American Legion reported at the third period expenditures of $3,220.27 in favor of a veterans' bond issue. The Southern California Prohibition Committee reported total expenditures of $2,216.22 against a proposal to repeal the state prohibition act. The person making the report stated: "This is the first report I have made out in California. I have done the best I know."

1928: The Draymen's Association of San Francisco reported total expenditures of $8,411.88 in a referendum against an act to increase taxes on trucks.

1930: All-California Committee Against Proposition No. 26, a Sunday closing measure, reported total expenditures of $7,375.00.

1932: H. L. Cornish spent $41,000 from the California Oil and Gas Association and the Union Oil Company in support of an oil control measure brought to the electorate on referendum. The Independent Petroleum Association spent, according to its final report, $46,399.82 against the same measure.

[11] For example, the manager of a campaign in support of a constitutional amendment of 1930 to exempt the Huntington Library from taxation filed a late report stating that "he did not know any was required until I saw other reports in the papers." In other cases, reports were made very late by temporary committees probably without a great deal of experience in such matters.

[12] The California State Church Federation holds the record for the most tardy report. Its final report of expenditures in favor of an initiative act of 1928 to repeal the boxing and wrestling act was over one hundred days late. The Church Federation was preceded in its report only about two weeks by the Veterans' League of Southern California, one of the organizations favoring boxing and wrestling. The veterans probably should not be assessed with responsibility for this organization, which was financed largely by prize-fight promoters, stadium owners, and the like

TABLE II

REPORTS OF RECEIPTS AND EXPENDITURES FILED BY 126 REPORTING AGENCIES, 1924–1934, INCLUSIVE*

	First Report	*Second Report*	*Third Report*
Number of Agencies Filing	45	88	123
Number Filed Late	13	31	11

* This tabulation includes all agencies which filed a report at any time during the campaigns indicated except certain ones which reported expenditures of less than $1,000, the statutory minimum reportable. Reports for the election of 1922 are not included because during that year only two reports were required, the third being added by amendment of 1923.

The form and content of the reports vary widely. Those filed by the California State Water and Power League in 1924 and 1926 probably are among the most ably prepared. Those made by the Pacific Gas and Electric Company appear to have been very carefully compiled. At the other extreme, a few are conspicuous for the carelessness with which they have been made up. Many violate the requirements in minor particulars at least. A few contain long lists of contributors and persons to whom payments have been made, but no totals of the listed amounts. Others give total receipts and expenditures, but do not indicate the sources of funds nor to whom payments were made. Most of the reports, however, give the essential information relating to source and disposition of funds. A few cases where the actual source was apparently concealed were noted. In 1930, the California Daylight Saving League, compaigning for the adoption of daylight saving time, reported total receipts of $89,757, of which $56,295 came from "Edwin Higgins, agent." The auditor of the League made an affidavit to the effect that he did not know for whom Mr. Higgins was acting as agent.[13] Associations frequently report expenditures or contributions from their own funds with no further indication of the source. In many cases, it is probable that membership dues or other contributions to such groups for campaign purposes do not exceed $25 a person and would not fall within the statu-

who were "entitled" to use this name because of the fact that a part of the proceeds from the licensing of such exhibitions was earmarked for institutions for the care of disabled veterans.

[13] In the case of Gilmore v. California Daylight Saving League. See note 20 below. In the same year, a committee working against a Sunday closing measure also reported a contribution from "Edwin Higgins, agent." A person of the same name was at the time manager-director of the California Oil and Gas Association. The petroleum interests were reported as favorable to the daylight saving initiative because of the belief that it would increase pleasure driving.

tory requirement. In order to secure effective publicity, however, it would appear necessary to insist upon fuller reports from associations, particularly in view of the tendency to form pressure-organizations with impressive titles which may not be descriptive of their actual character or motive. For example, on a referendum in 1933 against the Central Valley Project Act, a state water and power scheme, the California Taxation Improvement Association, by its secretary, Marvin L. Arnold, reported a contribution of $10,000 to the Industrial, Agricultural, and Home Owners' League of Southern California, doubtless a paper organization, which was working against the project. Marvin L. Arnold, as secretary of the Industrial, Agricultural, and Home Owners' League, reported receipts of $10,000 from the California Taxation Improvement Association. The circumlocution did not focus the burning beam of publicity on the actual sources of the funds, although it could readily enough have been surmised in a general way.[14] In other instances, reporting agencies have given more information than is strictly required by listing the name of every contributor of the most insignificant amount.

Most of the reports indicate satisfactorily the persons to whom payments are made. In campaigns on issues, a large proportion of the funds is used for publicity in one form or another. Some reports list all the newspapers, radio stations, billboard companies, mailing services, circular distributing concerns, and other such agencies which received payments. Other campaign agencies do not place their publicity themselves and list a lump-sum payment to a commercial advertising agency. It is believed that under the terms of the act these agencies are also obliged to file reports indicating the ultimate disposition of the funds, but no reports of ordinary advertising agencies are on file. [15] When funds go mainly for publicity, information as to the names of persons to whom payments

[14] In 1930, the State-wide Committee Against Amendment No. 21 reported receipts of $6,500 from the California Taxation Improvement Association; in 1932, the State-wide Committee Against Amendment No. 9, an income tax proposal, reported receipts of $8,000 from the Association; in 1933, the California Tax Relief Committee, campaigning for the abolition of the system of separation of sources of revenue, received over $10,000 from the Association. In each case, the Taxation Improvement Association reported its contributions to these organizations, but did not indicate their ultimate source. There were several other instances of this type. For example, in 1928 the California State-wide Committee for Federal Plan Reapportionment reported receipts of $7,000 from the Agricultural Legislative Committee.

[15] Reports have been made regularly, however, by Campaigns, Inc., a firm which specialized in handling all phases of campaigns for candidates and for organizations interested in constitutional amendments or other issues. The establishment of such a concern, operating successfully on a commercial basis, is extremely significant as an indication of the trend away from personal politics of the precinct variety and toward the use of modern propaganda techniques.

are made is not usually of vital importance. This type of requirement was doubtless originated to discourage payments to persons who could "deliver" the vote of a given area. The number of wards and counties in California which can be absolutely "delivered" by a boss or party committee is not large, and the more intelligent campaign managers are finding that money spent for radio time, newspaper space, billboards, and direct mail advertising is more wisely invested than money paid to self-styled potentates of petty bailiwicks. These tendencies make the source and total amounts of funds of greater importance than the names of persons to whom payments are made.[16]

TABLE III

MEASURES CLASSIFIED ACCORDING TO TOTAL REPORTED EXPENDITURES

Amount Spent Pro and Con in Thousands	*Constitutional Amendments and Other Issues Submitted by the Legislature*	*Initiated Constitutional Amendments and Statutes*	*Referenda*	*Total*
Under $25	20	10	2	32*
$ 25–$ 49	1	11	2	14
$ 50–$ 74		4		4
$ 75–$ 99		4	1	5
$100–$124		1	2	3
$125–$149			1	1
$150–$174		1	1	2
$175–$199		1		1
$650–$674		1		1

* Of these, 10 totaled less than $5,000; 15 less than $10,000; 22 less than $15,000; 27 less than $20,000.

In reporting total expenditures, some agencies of a permanent character doubtless have considerable difficulty in segregating their expenses on a particular campaign. In 1922, the Anti-Saloon League explained at great length in its report that it was a going concern engaged in educational work and that it was almost impossible to calculate what proportion of its expenditures should be charged to a particular campaign. The utility companies usually indicate that a portion of their expenditures go for the time of their regular employees and occasionally state that this

[16] The Jones Committee in 1923 found that in a campaign against the state water and power proposal the opponents had hired a prominent labor union official to aid them. He resigned his union offices when this was disclosed. The committee also found in several instances that campaign managers had employed prominent members of women's organizations. A prominent W. C. T. U. leader, for example, was employed to work for the public utilities against the water and power proposal. This is the type of expenditure which publicity requirements are designed to discourage.

is charged to surplus. Other organizations, less well equipped for cost accounting than utilities, doubtless fail to report expenditures incurred in the ordinary operation of their secretariats during campaigns which might properly be charged to the campaign.

The amount of expenditures reported for campaigns on issues is much greater than expenditures reported for candidates. The statute applicable to issues does not attempt to limit the amount spent, and hence there is no pressing necessity for under-statement as in the case of candidates for office. The total expenditures for and against slightly more than one-half of the measures classified in Table III was less than $25,000 each. Expenditures on initiated constitutional amendments and statutes and referred measures tended to be considerably higher than for constitutional amendments and other questions referred by the legislature. The largest amount recorded on any single measure was a total of $661,595.73 spent for and against a proposed state water and power system in 1922. Slightly over $500,000 of this amount was spent by the utilities and allied interests against the proposal.[17] The daylight saving initiative act of 1930 involved total expenditures of $183,000, and another water and power proposal in 1924 led to reported expenditures of slightly more than $150,000. The only other initiative proposition to evoke expenditures of over $100,000 was a proposed constitutional amendment to grant certain oil-bearing tidelands to the city of Huntington Beach. Less than $25,000 total expenditures were reported on only two of the nine referendum measures voted on during the period under review. The largest reported sum on such a measure was $170,000 on an act voted on in 1926 which had as its objective the taxation and stringent regulation of the sale of oleomargarine. The opponents of this act reported expenditures of $115,000, while the dairy and creamery interests spent $55,000 in support. A measure voted on in 1922 to prohibit the practice of law by banks and trust companies tapped the banking tills and legal wallets for a total of $117,000. Utility opponents of the Central Valley Project, referred to the electorate by petition in 1933, spent $96,000 against the $39,000 disbursed by its advocates.[18] The totals reported are doubtless less than actual expenditures, particularly in those cases where a large number of local organizations spending less than the reportable minimum are interested.

The totals spent for and against the different types of measures on

[17] Most of the money to support this proposition was furnished by Mr. Rudolph Spreckels, then of San Francisco.

[18] In seven of the twenty-six cases in which reports were made by both proponents and opponents of a measure, the side making the smaller expenditure won the campaign. In three of the seven cases, however, the difference in expenditures was less than $1,000.

which information is available are given in Table IV. It will be noted that only a small sum was reported as having been spent against constitutional amendments and other questions proposed by the legislature, and almost three-fourths of this total was expended in campaigns against only two measures. The total of over $2,000,000 spent on initiated constitutional amendments and statutes is about equally divided between advocates and opponents of such propositions. About $500,000 of the

TABLE IV

TOTAL REPORTED EXPENDITURES ON MEASURES, 1922–1934, INCLUSIVE*

Type of Measure	*For*	*Against*	*Total*
Constitutional Amendments and Other Issues from the Legislature	$ 201,879	$ 40,494	$ 242,373
Initiated Constitutional Amendments and Statutes	1,098,855	1,125,336	2,224,191
Referred Acts	303,698	394,293	679,991
Total	$1,604,432	$1,560,123	$3,146,555

* Included in these totals are unreported expenditures discovered by the Jones Committee for the 1922 election.

$1,125,000 shown as spent against all initiated measures was spent by the public utilities against a single measure in 1922. The initiative is frequently opposed as a device whereby vested interests may be attacked and compelled to spend vast sums in defense of their rights before the electorate. Judging from these figures, however, initiated propositions involve disputes between conflicting groups of the possessed. It is probably in the public interest that the money be spent for publicity purposes —as is largely the case in these campaigns—rather than that the mechanism of representative government be controlled by campaign contributions aimed at electing legislative representatives who will kill "sandbagging" measures. At any rate, the price of possession is defense, regardless of the mode of attack.

As is the case with most statutes requiring publicity of campaign finance, little has been done to apprehend violators of this particular act. The penalties provided include a fine of not more than $1,000 and a maximum jail sentence of one year. The penalty of imprisonment was added in 1923, in the hope that this threat would have more effect than the fine alone. In addition, a person violating any provision of the act is liable to a civil penalty of $1,000 to be recovered by any citizen of the state. No prosecutions or civil actions have been made under the act.[19]

[19] Information furnished by Mr. Charles J. Hagerty, deputy secretary of state.

In one instance, a report was filed a day after a petition for an alternative writ of mandate had been granted by a superior court commanding the campaign organization to file its report or show cause why it should not.[20] Probably the most effective type of enforcement action is legislative investigation. The inquiry conducted by a senate committee in 1923 has doubtless had the effect of stimulating reports from various business groups. It is believed that much more complete reporting would occur if the secretary of state were charged with the duty of communicating with campaign committees during the pre-election period, informing them of the requirements of the statute.[21] This conclusion is reached because of the fact that many of those failing to report, or who filed reports tardily, were organizations or committees which would not be expected, in the ordinary course of events, to be familiar with such legislation.

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[20] Gilmore v. California Daylight Saving League, No. 45, 259, Superior Court, Sacramento County, 1930. The Daylight Saving League was supporting an initiative proposition to adopt daylight saving time and was backed principally by brokers and bankers who were handicapped in doing business during the summer months when Eastern cities turned their clocks an hour ahead. The opposition was financed principally by the movies and utilities, fearful of losing business if the proposal should be adopted, with the active support of the clergy, both Protestant and Catholic, who anticipated declines in summer church attendance.

[21] Such a requirement would be more feasible if Senate Bill No. 127 had been adopted at the 1935 session of the legislature. This bill required every committee working for or against any candidate or measure to register with the secretary of state.

The Cuban Elections of 1936.* May 20, 1936, was a date of importance in Cuban history. Not only was it the thirty-fourth anniversary of the birth of the Cuban Republic; it marked the first time in seven years (as many Cubans maintain) that a completely constitutional government had control of the island's political destinies. On May 20 of this year occurred the inauguration of Miguel Mariano Gómez y Arias, sixth "regularly elected" president of Cuba, son of the Republic's second president, and the man who, at least nominally, will be at the helm of the Cuban ship of state in the immediate future.

If the inauguration of Gómez marks the return to a constitutional régime, the beginnings of a departure from such a government may be traced back to the reëlection of General Gerardo Machado y Morales as president in 1928. During the years following his first inauguration on May 20, 1925, Machado became increasingly dictatorial, and in 1927–28 he cleverly engineered certain allegedly illegal constitutional changes designed to facilitate his retention of power for an additional term of six years. In a completely dominated election in 1928, Machado, as the only candidate, was returned to the presidency, apparently until May 20, 1935.[1]

The failure of a revolt in August, 1931—the result of accumulated discontent—gave *prima facie* support to two conclusions: that as long as the army remained faithful, and as long as the United States ambassador brought no diplomatic pressure to bear, the tenure of the dictator would be reasonably secure. In 1933 came the appointment of Sumner Welles as United States ambassador to Cuba. He was forced by the growing tension to assume an active, almost a dominant, rôle in political developments, and soon he became the key figure in the confused currents of negotiation between Machado and opposition groups. With startling and dramatic suddenness, a climax developed during the first half of August, 1933.[2] A general strike, diplomatic pressure from Welles, and a *coup d'état* in which army officers deserted Machado compelled the President's resignation and flight. Titular leadership passed to Carlos Manuel de Céspedes as provisional president. The fiction of a constitutional succession had been maintained at Welles' insistence.

The next important step in the kaleidoscopic development of events

* The writers acknowledge their debt to Sra. Estela Agramonte de Rodríguez of Havana, formerly of the faculty of the University of Havana, for suggestions and other assistance given by her.

[1] Cf. Raymond Leslie Buell, *et al.*, *Problems of the New Cuba* (New York, 1935), pp. 9–10.

[2] Charles A. Thomson, "The Cuban Revolution: Fall of Machado," *Foreign Policy Reports*, Vol. 11, No. 21 (Dec. 18, 1935), pp. 254–59.

came on September 4 when Céspedes was forced out of office by a bloodless *coup* promoted by a revolutionary *junta* with the support of the army, now controlled by the non-commissioned officers under the leadership of the erstwhile sergeant, Fulgencio Batista, a former military court stenographer.[3] The five-man *junta* gave way in a few days to a more conventional form of government when the revolutionary group named one of its number, Dr. Ramón Grau San Martín, as provisional president. This government had the support of the influential student group, but other powerful political elements opposed it, and its tenure of four months remained decidedly insecure. Welles was succeeded on December 4, 1933, by Jefferson Caffery, who was designated as the "personal representative" of President Roosevelt. Turbulence and political instability increased as 1933 gave way to 1934—largely because of Grau's inability to win over Opposition elements and to gain United States recognition—and on January 15, 1934, Grau placed his resignation in the hands of the *junta*.

Three days later, Colonel Carlos Mendieta, long a Cuban political leader and the man considered most likely to receive general Cuban support, succeeded to the provisional presidency. Mendieta's administration began under a benign star. United States recognition, for which Grau had striven vainly for four months, was extended on January 23, only five days after Mendieta's assumption of office. In time, there followed a new relations treaty (signed May 29, 1934) abrogating the Platt Amendment, and a more favorable reciprocity treaty (technically a "trade agreement," signed August 24, 1934). Disorders continued, however, and the repressive acts of the Mendieta government seemed, so its critics felt, to mark out its future in a line parallel to that of the *Machadato*, especially as the iron-handed and iron-willed figure of Batista loomed ever more formidably in the background.[4]

The intervals between the successive turns of the political wheel still left opportunity to take steps to get the island's government back on a constitutional basis. Admittedly a difficult task at best, it was made worse by tension and political maladjustment inherited from the Machado régime. The first step in the direction of political reconstruction was the action of the Céspedes administration August 24, 1933, in repealing the constitutional "reforms" of 1928. The decree restored in its entirety the original constitution of 1901, dissolved the Congress, removed some appointive and many elective officials, and provided for the appointment of a consultative commission.[5] This action marked an open abandonment of

[3] Russell H. Fitzgibbon, *Cuba and the United States, 1900–1935* (Menasha, Wis., 1935), pp. 197–198; Charles A. Thomson, "The Cuban Revolution: Reform and Reaction," *Foreign Policy Reports*, Vol. 11, No. 22 (Jan. 1, 1936), p. 262.

[4] Cf. Thomson, "Reform and Reaction," pp. 270–71, 274–75.

[5] Presidential decree no. 1298, *Gaceta Oficial, Edición Extraordinaria No. 23*, Aug. 24, 1933.

the constitutional régime which Welles had labored to maintain and was obviously a reversion to a *de facto* government. Genuine constitutional reform, insisted on by the newer revolutionary elements, was precluded through the channel of the Céspedes government by its early fall at the hands of the *junta*.

One of the first acts of Grau, who inclined toward the Left, was to issue statutes on September 14, 1933, which in effect abrogated the 1901 constitution as restored by Céspedes less than a month before.[6] These new statutes pledged the maintenance of "absolute national independence and sovereignty" and promised the early summoning of a constitutional convention. Elections for this body were later set for April 1, 1934. The practical suspension of the 1901 constitution was a concession to the student group, which comprised the chief element in Grau's support; but the new statutes formed at best only a thin constitutional foundation for a governmental structure.

One of Mendieta's early steps was the promulgation, on February 3, 1934, of a constitutional law which supplanted the Grau statutes and revoked the 1901 constitution as well as the amendments of 1928.[7] This provisional constitution vested the legislative function in the President; it also created a presidentially appointed advisory Council of State. The first of numerous electoral delays came at this time in the provision that elections for the choice of delegates to a constituent convention should be held not later than December 31, 1934.

The provisional constitution of February, 1934, continued in effect for thirteen months. Reforms made on March 4, 1935, in this provisional constitution provided that elections originally scheduled for delegates to a constitutional assembly should be for president, vice-president, and members of Congress instead.[8] But four days later, on the pretext of a general strike, these reforms were suspended, along with the provisional constitution.[9] There followed an interim of three months during which the government of Cuba operated without any constitutional basis. Mendieta announced on June 1, 1935, the restoration of the 1901 constitution in modified form, although the action was not formally consummated until June 11, when the document was signed in a joint session of the Cabinet and the Council of State.[10] The suspended reforms of March 4 were again set in order. The matter of constitutional revision was postponed—the future Congress was charged with drafting a new basic

[6] Statutes for the Provisional Government of Cuba. *Gaceta Oficial, Edición Extraordinaria No. 30*, Sept. 14, 1933.

[7] Constitutional law of the Republic of Cuba. *Gaceta Oficial, Edición Extraordinaria No. 10*, Feb. 3, 1934.

[8] *Ibid., Edición Extraordinaria No. 12*, Mar. 4, 1935.

[9] *Ibid , Edición Extraordinaria No. 14*, Mar. 8, 1935.

[10] *Ibid., Edición Extraordinaria No. 93*, June 12, 1935.

law within six months after its convening, subsequently submitting it to a constituent assembly for ratification.

An important piece of governmental machinery in contemplation of the approaching elections was the Supreme Electoral Tribunal. This had been created by an electoral decree of October, 1934, promulgated with a view to the election of delegates to a constitutional convention.[11] The Supreme Electoral Tribunal was designed to supplant the *Junta Central Electoral* created by the Crowder electoral code of 1919. When in June, 1935, it was decided that the coming elections were to be general rather than for delegates to a constituent assembly, the provisional government formulated a new electoral code in which the powers and duties of the Tribunal were set forth.[12] Each existing political party was allowed one member of the Tribunal, but there were in addition a number of *ex officio* members drawn from the various branches of the government.

Elections were repeatedly postponed. After having been set for December 31, 1934, for the choice of delegates to a constituent convention, they were in November delayed to March 3, 1935. Further delay came with the adoption of a Cabinet resolution on February 19, 1935, postponing them until between July 30 and August 25. Still other delays were to come.

During this period of uncertainty about constitutional revision, party activity went on apace. A Cabinet decree on April 12, 1935, restored to legal status the old political parties, outlawed some months before, but afterwards prominent figures and office-holders of the Machado régime were excluded from candidacy in the approaching elections.[13] The party situation in 1935 showed much confusion. The established parties of the 20's had been three in number: the Liberal, the Conservative, and the insubstantial Popular party. The wholesale distribution by Machado of *colecturias* (sales offices) in the national lottery succeeded in emasculating all of the parties and made them subservient to his dictatorship. One result was the venal party *cooperativismo* of 1926–28. Dissident elements or fractions were forced into exile. The Unión Nacionalista was formed during the 20's by Mendieta, but was not formally recognized as a party and was forced to operate in large part *sub rosa*.

In addition, a number of new groups—youthful, aggressive, and revolutionary quasi-parties—sprang up during the dictatorship and post-Machado period. First of these was the "ABC." This interesting organization, composed mainly of young business and professional men, operated

[11] Electoral decree 563, *Gaceta Oficial, Edición Extraordinaria No. 90*, Oct. 8, 1935.

[12] *Ibid., Edición Extraordinaria No. 120*, July 2, 1935.

[13] The "blame" (*tacha*) excluding prominent Machadistas was approved May 21, 1935. Law 169, *Gaceta Oficial, Edición Extraordinaria No. 66*, May 22, 1935.

secretly during the closing years of Machado's régime and was an important element in his downfall. It was popularly acclaimed with fanatical enthusiasm in August, 1933, and was the dominant group in the short-lived Céspedes administration. But by 1935 the ABC—much more idealistic than the old parties representing the "men of '95", but less well organized for permanent functioning—had disintegrated into minor factions according to the respective tendencies of their constituencies toward the left or right. With this tendency toward fractionation came a corresponding loss of effectiveness. During 1933–34, the nationalistic elements supporting Grau and the *junta* coalesced into the Auténticos, so-called because they claimed to represent the "authentic" revolutionary aims of the Cuban people. This group remained consistently to the left of the ABC (and, of course, the old parties), although several small "splinter parties" were still more radical. Followers of Céspedes, who served as ambassador to Spain under Mendieta, organized the Centrist party, a small and unobtrusive group which took but little part in the activity of 1935–36. A host of ephemeral parties or groups in 1934–35 added to the complexity of the political picture.[14]

In addition to the new groups, the established parties underwent reorganization. The old Liberal party had early developed schisms. Mendieta, defeated by Machado for the Liberal nomination in 1924, had organized the Unión Nacionalista, which was, naturally, in disfavor during the Machado régime. Miguel Mariano Gómez, inheritor of the Liberal party tradition of his father, had led an opposition wing which became popularly known as the Marianistas. In 1935, this group reorganized as the Acción Republicana, or Republican party. A third Liberal group was composed of the survivors of the Machado administration, now greatly reduced in numbers, effectiveness, and prestige, of course; although they continued to use the name Liberal. The Conservative party of the Menocal administrations (1913–21), a portion of which (the orthodox or noncoöperating Conservatives—popularly the Menocalistas) continued a precarious existence during the Machado years, was reorganized in 1935 as the Conjunto Nacional Democrático. The party transitionary period in the summer of 1935 was one of great confusion—elements in it were the search for suitable candidates, tentative proposals of party alliance, and the effort to devise platforms acceptable to the greatest number.

The Cabinet and the Council of State, on June 22, 1935, set general elections for December 15.[15] This intensified party activity. The Republicans and Liberals came together in a pact of expediency in which neither

[14] An observer writing in the spring of 1935 listed no fewer than 17 leftwing organizations. *New York Times*, March 13, 1935, p. 8.

[15] Electoral Code, Art. III. Decree-law 54, *Gaceta Oficial, Edición Extraordinaria No. 120*, July 2, 1935.

felt entirely at home, but this was broken off by Gómez, Republican chieftain, when it was discovered that certain Liberal leaders were in correspondence with the exiled Orestes Ferrara, former Liberal secretary of state under Machado and probably as wily a figure as has played a part in recent Cuban politics. Former Machadistas were, it was alleged, to furnish campaign funds in return for favors. These charges were denied in a most vehement fashion by Ramón Vasconcelos, Liberal leader, in a series of public letters which appeared in Havana papers.[16] The repeated denials of Vasconcelos resulted in a public exposition by Miguel de Varona, a member of the Liberal party, who admitted acting as intermediary between Vasconcelos and the "*émigrés.*" Varona was able to produce concrete evidence in the form of actual correspondence relayed by him to Liberal leaders and coming from exiled members of the party.

The Republican-Liberal *entente*, engineered by Gómez and Vasconcelos, had contemplated the former as joint presidential candidate, but an important fraction of the Liberal party found Gómez difficult to accept. Although the enthusiastic son of Cuba's second president might readily have had as his own the adherents of his father, he succeeded in antagonizing them by trying to force them to seek refuge under his Republican banner. On certain public occasions, he made tactless remarks in which he classed all members of the Liberal party as Machadistas. Following the breakdown of the Republican-Liberal alignment, the Republicans and the Nacionalistas made overtures toward each other. This was the more natural for the latter group since it lacked any outstanding candidate of its own as a consequence of Mendieta's insistence that he would not run for reëlection.

Jockeying for position by potential candidates characterized the autumn months of 1935. It was a foregone conclusion that the well-knit Democratic party would nominate Menocal. Gómez, the Republican, became the first candidate to announce himself, but the first nomination formally made was that of Dr. Manuel de la Cruz by the Liberal party on September 29. Republicans and Nacionalistas on October 20 nominated Gómez for president and Federico Laredo Bru, president of the Council of State and a prominent Nationalist leader, for vice-president. During September and October, efforts were made to negotiate an alliance among Republicans, Nationalists, and Liberals in such a form that Cruz could withdraw gracefully in favor of Gómez and thus permit a united front against Menocal. A quartet of nominations was completed when the Centrists named Céspedes.

Liberal ranks were seemingly faced with almost fatal defections when five of the six provincial assemblies of that party declared for Gómez by

[16] *El País* (Havana), July 11, 19, 20, 30, 31, 1935.

naming the same set of presidential electors (*compromisarios*) which the Republican-Nationalist coalition had selected.[17] The action seems to have been taken in accordance with a "suggestion" made by Batista. This latest complication the Supreme Electoral Tribunal held to be unconstitutional.[18] As a consequence, the Nationalist leader Del Pozo publicly accused *ex officio* members of the Tribunal of a breach of the impartiality which they were expected to maintain. Their disposal to favor Cruz would preclude the ominous threat of this tripartite alliance.

Secretary of the Interior Maximiliano Smith announced on November 23 that the government would take no immediate steps to reform the electoral code—perennial subject of controversy in Cuba—and at the same time the Republicans, Nationalists, and Liberals resolved to suspend political activity pending a conference with the government on the adverse Electoral Tribunal ruling. Lines were more tightly drawn when the Democrats threatened abstention from participation in the election if the Tribunal's decision was not respected.

The Cabinet's answer on November 28, when Mendieta referred the *impasse* to that group, was the indefinite postponement of the elections in view of the government's failure to conciliate the parties.[19] The Cabinet invited President Harold W. Dodds, of Princeton University, to come to Cuba to suggest an equitable basis for proceeding with the elections. He spent several days in Havana early in December and prepared an electoral formula which in effect nullified the decision of the Electoral Tribunal banning the tri-party coalition. The formula provided for presidential electors to be nominated from two or more parties, who should exercise the option of confirming the nominations of their respective parties or those of any other party; the candidates thus selected should become official candidates of the parties.[20]

The government fully accepted the Dodds compromise and set elections anew for January 10, 1936. The Council of State promptly approved "in principle" a decree embodying the Dodds formula.[21] An immediate reaction from another quarter, however, was the withdrawal of Menocal and Céspedes from the campaign and the demand by the former that Mendieta forthwith resign his provisional presidency. Mendieta's willingness to see the Electoral Tribunal's decision reviewed or set aside indicated, Menocal charged, collusion with the Republicans and their allies and a departure from the political neutrality which the presidency de-

[17] Thomson, "Reform and Reaction," p. 275.

[18] *Diario de la Marina* (Havana), Nov. 20, 1935, p. 17.

[19] Decree-Law 437, *Gaceta Oficial, Edición Extraordinaria No. 308*, Nov. 29, 1935.

[20] *Avance* (Havana), Dec. 6, 1935, p. 1.

[21] Decree-Law 445, *Gaceta Oficial, Edición Extraordinaria No. 317*, Dec. 9, 1935.

manded. A public letter written by Menocal intimated in the all-too-familiar Cuban fashion the possibility of revolution. Were Menocal's retirement to continue, it would mean that Gómez would be virtually without opposition, but it would correspondingly decrease the significance of any elections held and would presage a possible subsequent recourse by the opposition to bullets rather than ballots. Mendieta, determined that the elections should be held as scheduled,[22] acceded to the Democratic demand and resigned on December 10, following two days of confused negotiations. The Electoral College, composed of the Cabinet and the Council of State, named as his successor in the provisional presidency Secretary of State José A. Barnet y Vinageras. Thus placated, the Menocalistas returned to the race.

Cruz, probably in anticipation of his own ousting as a candidate by the Liberal party electors, accused the United States of "diplomatic meddling" and attacked the Dodds formula in court. His fears were realized when on December 18 the Liberal electors, operating under the Dodds formula, set him aside as the official Liberal candidate in favor of Gómez, and thus finally and formally effected the long considered tri-party coalition. The alliance extended only to elections for president, vice-president, senators, and provincial governors; hence it was anticipated that the Democrats might expect to carry the House of Representatives and provincial and municipal elections.[23] Cruz' petition was dismissed by the Supreme Court on January 9, the day preceding the elections.

The final stages of the campaign were relatively apathetic in contrast to the tension which had preceded. Gómez made the strongest bid for the office, touring the island and holding rallies in all six provinces. Menocal, not in good health, did not wage an aggressive campaign. The conclusion of the campaign was orderly, perhaps because of the general indifference which characterized the attitude of the people as a whole. Only minor riots accompanied the balloting on January 10.[24] Despite the fact that women were exercising the suffrage for the first time, the vote was light. The younger revolutionary elements largely abstained from voting. Labor was generally disorganized, and the National Confederation of Labor had earlier announced that it would not support any government chosen in the elections.[25] Business was glad to have the elections past

[22] It is quite probable that a factor in the Administration's determination was the representations made by Ambassador Caffery. He expressed to President Mendieta the opinion that the elections should be held and that they should be something more than a mere formality. Personal statement, Mr. Caffery to Mr. Healey, May 25, 1936.

[23] *New York Times*, Jan. 10, 1936, p. 3.

[24] *Diario de la Marina* (afternoon edition), Jan. 10, 1936, p. 1; Jan. 12, 1936, p. 1.

[25] *New York Times*, Nov. 24, 1935, sec. 4, p. 12.

before the beginning of the *zafra* (the season allotted for the cutting and grinding of the sugar cane).

It became apparent at once that the elections had resulted in a coalition landslide. Afternoon editions of Havana papers conceded victory to Gómez.[26] By January 12, Gómez' recorded majority had increased to 41,414 in 1,725, or about one-third, of the island's 5,227 precincts.[27] Final and official results were not available even by June, 1936, however. It was early discovered that the Democrats would have no members at all in the newly elected Senate. This led, about a week after the elections, to a suggestion made by José I. Rivero, editor of *Diario de la Marina*, and Oscar Zayas, editor of *Avance*—both of whom had served as mediators between the government and the parties in the December negotiations—that the defeated Democrats be given seats in the Senate in proportion to their voting strength in the elections.[28] Such a compromise gained more official standing when the Cabinet moved on January 22 to amend the constitution retroactively to provide for an increase in the number of senators from each province from four to six, the additional twelve seats to be allotted to the Democrats.[29] Menocal termed the proposal a "political gift" and was quick to assert that his party would not accept minority representation in this way, but others in the party were in favor of this "half loaf," notably Santiago Verdeja, president of the Conjunto, who attempted to convince the party that it was a patriotic duty to create a political opposition in the Senate. The party announced on January 28 that it would accept the proposal if the Supreme Court held the plan constitutional.

Cuba's new Congress met on April 6 in the magnificent Capitolio in Havana. The coalition held 24 of the Senate seats and the Democrats the remaining 12. Of the 162 members of the House, the Democrats claimed 70, the Unionist party two, and the coalition the other 90. A clash threatening the disintegration of the coalition quickly developed over the election of a president of the House, although this was ultimately settled amicably by the election of Dr. Carlos Márquez Sterling. The Congress formally proclaimed the election of Gómez and Laredo Bru on May 7.

President-elect Gómez, after a post-election tour through the island, left Cuba on March 16 for a trip to Panama and the west coast of the United States, whence he proceeded to Washington and New York before sailing for Havana May 1. It was denied on his behalf that either formal political conversations at Washington or financial negotiations in New York would characterize his visits in those cities. Whatever may have

[26] *El País*, Jan. 10, 1936, p. 1; *Avance*, Jan. 10, 1936, p. 1.
[27] *Pan-American Review* (Havana), January, 1936, p. 44.
[28] *Diario de la Marina* and *Avance*, January, 1936, *passim*.
[29] *Gaceta Oficial, Edición Extraordinaria No. 17*, Jan. 24, 1936.

been Gómez' real intentions in regard to matters of state on his visit to Washington, they were to an extent precluded by White House mourning over the death of Colonel Howe of the Roosevelt secretariat. The reception of the Gómez family in the White House was hence of a limited nature, such as would not easily permit the extended discussion of official business.

The President-elect returned to Havana on May 3, three weeks prior to his inauguration. Almost daily, some official announcement was expected with regard to the assignment of Cabinet portfolios. Gómez' attitude was characterized by taciturnity, and each day speculation and expectation multiplied. Announcement of the new Cabinet was not made until midnight preceding the inauguration. Those who have throughout the past uncertain years looked forward to a "better day" in Cuban politics were encouraged by the Cabinet choices, since they included men of acknowledged ability who stood above the class of professional politicians. At noon on May 20, Gómez was inaugurated as the sixth constitutional president of the Republic and the first to be regularly elected in almost eight years. Six hours later, he appeared for the first time before the joint assembly of the two houses of Congress to deliver his inaugural address. He stressed especially the reëstablishment of Cuba's foreign credit, a substantial reduction in administrative expenses, "autonomy" for the University of Havana, and amnesty for political exiles, and recommended in a broad way legislation of a social, economic, and agricultural nature.

Thus Cuba for the first time in seven years may be said to have a completely constitutional government. The future, however, is not thereby freed of ominousness. Both in 1935 and 1936, a growing sense of frustration and hopelessness was to be noted on the part of a large fraction of intelligent Cubans. Gómez and Cruz, for example, are of a younger generation—both were boys at the time of the War for Independence—but their political habits and thought patterns are molded after those of the "men of '95." That, to the forward-looking Cuban, means a conventionalized reaction to politics which thinks in terms of the "*chivo*" ("graft") and *botellas* ("soft jobs") and rejects any notion of a social and economic revolution. Old-school politics, the younger reformers say, has captured the stage and nothing is to be expected of it. No progressive land policy looking toward small, Cuban-owned holdings is to be anticipated, they aver, nor any social welfare program nor development of coöperative associations nor forced reduction of utilities rates. The fine idealism which flared into eager hope with the downfall of Machado has been largely dissipated by inability to agree on programs, maneuvering for party and personal advantage, domination by the well disciplined army, a fear of the attitude of the United States government, the excesses of the more

radical groups,[30] the tenacity of "machine politics," and other factors. The flame of enthusiasm has given way to ashes of bitterness and disillusion.

On the other hand, members of the established parties argue that unless a conventional development is followed, United States recognition may not be expected and that, lacking this, no development of consequence in any direction may take place. For proof, they point to Washington's quick acceptance of Céspedes and Mendieta as contrasted with the failure to recognize Grau. Orderly processes of political evolution are more to be relied on, they argue, than the chimera of social revolution. They point to the Supreme Court resolution of April 12, 1936, taking sharply to task the administration and the lower courts for failure to halt the numerous instances in which prisoners have been killed "while attempting to escape" after arrest as an earnest that checks to excesses can and will be developed within the framework of a government organized in a more orthodox manner. As in many Latin American countries, communism, if not an actual threat to established government, is at least built up into a straw man which is exploited to the fullest by conservative parties and individuals.

At the moment of writing, a number of factors would seem to indicate the approach of the long-awaited "better day." During the elections and the succeeding inauguration, disorders and riots were infrequent, widely scattered, and localized. The mere fact that Gómez was elected "regularly" should, it seems, have some psychological value after the uncertainties of the provisional régimes. The appointment of technically qualified men to the various Cabinet posts was a departure from the machinations of earlier years. The threatening shadow of Batista, which obscured the pathway of normal progress for successive provisional presidents, seems less ominous. Two well-known Washington political correspondents reported confidently on the eve of Gómez' inauguration that two purposes of his visit to Washington had been to solicit United States support in the event of a later "break" with Batista and to request the transfer of Ambassador Caffery to another post.[31] If Batista's star is headed toward

[30] Joven Cuba ("Young Cuba"), for example, is still carrying on an anti-government campaign expressing itself in acts of terrorism.

[31] Robert S. Allen and Drew Pearson, in "The Daily Washington Merry-Go-Round" (a syndicated column), May 19, 1936. From a letter, Mr. Pearson to Mr. Fitzgibbon, May 25, 1936: "The reason you did not see the [above-mentioned] story published in the *New York Times* and other newspapers was that it was a rather exclusive one and I don't believe any other journalist got it. Naturally, as every journalist's sources must be confidential, I am not permitted to tell you from whom I got my facts, but I can tell you that they came from the very highest sources. The only amendment I might make to the story, after talking with these same sources following publication, is that Caffery will not leave Cuba immediately.

eclipse, Cubans may feel assured that one obstacle to the restoration of a more normal government has been removed. Disclosure on May 31 of negotiations for the strengthening of Cuba's foreign credit was received enthusiastically. A further revival in the sugar industry may bring a prosperity which, with its promise of security and well-being, will dull the edge of the demand for social and economic reform.

Yet, should any of these possibilities not materialize, minor elements might easily agitate in such a way as to cause widespread dissatisfaction. And thus Cuba remains potentially a Caribbean powder-keg, the ignition of which might easily bring continued distress and confusion to the island and shock and embarrassment to the United States.

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He will remain for a month, or possibly two months. I think one reason for this is the fact that my story was published rather widely in South America and the State Department wants to save Caffery's prestige by not removing him immediately. You will notice also that Gomez' speech tended to confirm the story in that he stressed the importance of civil liberty and the fact that he intended to make this the keystone of his administration."

Kelsen's Theory of International Law. Among legal philosophers, the time-honored dispute between natural-law schools and legal positivists arouses ever new interest. On the side of the positivists, the "pure theory of law" gains more and more ground. This theory is mainly represented by Professor Hans Kelsen, formerly of Vienna, now of Geneva, and by Professor Alfred von Verdross, of Vienna.[1] In America, systematic consideration was first devoted to it by Dr. Johannes Mattern,[2] who analyzed Verdross's thinking; later, Dr. Josef L. Kunz,[3] one of the foremost followers of Kelsen, took up the discussion, emphasizing the importance of the theory for a scientific basis of international law; and quite recently an article by Dr. Henry Janzen[4] dealt with legal monism as the basis of the "pure theory of law."

No American publication, however, takes account of Kelsen's newest book, *Reine Rechtslehre*.[5] To be sure, an English version of a contemporaneous article by Kelsen[6] reflects the ideas of his German book. But, unfortunately, Kelsen's article fails to expound the most important part of his philosophical structure: the "pure theory" in its relation to international law.[7] It is this phase of Kelsen's latest work to which the present discussion is devoted.

Professor Kelsen conceives law as a hierarchy. The constitution stands above the statute, the statute above the ordinance, and any norm-setting organ is a higher organ than one which does not set norms but merely applies them. According to Kelsen, it is not the legal order of states that

[1] The school of the "Pure Theory of Law" is often called "Austrian School" or "Vienna School."

[2] *Concepts of State, Sovereignty, and International Law* (1928), pp. 121 ff.; "Alfred Verdross' Concept of the Unity of the Legal Order on the Basis of the International Constitution," in *Methods in Social Science* (ed. by S. A. Rice), pp. 118 ff.

[3] "The Vienna School and International Law," *New York University Law Quarterly Review*, March, 1934, pp. 370–421.

[4] "The Legal Monism of Alfred Verdross," in this REVIEW, June, 1935, pp. 387–402.

[5] *Reine Rechtslehre, Einleitung in die rechtswissenschaftliche Problematik* (1934). A short review of this book by Dr. Josef L. Kunz will be found in the *American Journal of International Law*, April, 1935, pp. 356–357.

[6] "The Pure Theory of Law; Its Method and Fundamental Concepts," trans., with an introduction, by Charles H. Wilson, in *Law Quarterly Review*, October, 1934, pp. 474–498; July, 1935, pp. 517–535.

[7] On this part of the "Pure Theory of Law," see also J. Walter Jones, "The 'Pure' Theory of International Law," in *British Year Book of International Law* (1935), pp. 5 ff. This illuminating study seems to have been written without the author's knowledge of Professor Kelsen's newest book.

occupies the highest stage in the hierarchy of law; it is international law that tops the pyramid. Interstate relations are, according to him, governed by law just as are intrastate relations. For Kelsen, the positivist, international law is like any other law, and he rejects theories of international law which employ terms like "rights of mankind" or "justice." International law is, according to him, a system of norms which became such by custom. Thus international law is, in the first place, customary law. One norm of this customary law, however, is the rule "*pacta sunt servanda*," which is the basis of international treaty law.[8] Hence Kelsen opposes the dualistic contention that only the consent of states creates international law and that the norms of international customary law are arrived at by a process of tacit consent. This theory is opposed by Kelsen, the monist and purist, because of its attachment to the conception of state sovereignty and because treaties are generally valid even when the will of the parties to be bound by treaties has vanished.[9]

As stated before, according to Kelsen, international law is law like any other law—for instance, like state law; it obligates and authorizes individuals. The norms of international law have the same characteristics as those of state law. Therefore, the norms of international law can be analyzed by the same method which is used for the analysis of norms generally; and this analysis leads Kelsen to the positing of an act of compulsion as the consequence of certain factual conditions which are considered illegal actions. In international law, reprisals and war are those acts of compulsion which are consequences of illegal actions.

But the international order still forms a primitive legal order, comparable to that of pre-state communities. It is the members of the international legal order themselves, not a legislative body, which determine the norms. In most cases, the question whether a norm has been violated is decided by the party which charges the violation, not by a judicial organ. It is the party to the dispute determining the guilt of its adversary, not an executive organ, which applies the measure of compulsion (reprisal, war) as a consequence of the legal wrong.

This primitive, or "decentralized," status of the international legal order, argues Kelsen, is gradually being overcome. The international legal order, pace by pace, institutes its own organs; some day it will

[8] Verdross prefers the following rule to "*pacta sunt servanda*": "Communities, sovereign or part sovereign, regulate your conduct in your relations with one another according to the generally recognized principles of law, so far as they have not been modified by rules which international usage has established as valid." Alfred Verdross, "Die allgemeinen Rechtsgrundsätze als Völkerrechtsquelle," in *Gesellschaft, Staat und Recht* (edited by Alfred Verdross), 1931, pp. 354 ff. Translation by J. Walter Jones, *loc. cit.*, p. 11.

[9] J. Walter Jones, *loc. cit.*, p. 19, dwells largely on this argument.

no longer be necessary that states act in the rôle of intermediaries between the international legal order and the individual. At present, however, the "centralizing" process is perceivable only in particularist communities of the international legal order, and, as was the case in the pre-state period, first in the field of jurisdiction.

A verdict by an international judicial tribunal, Kelsen holds,[10] signifies the ascertainment of the "obligation to compensate for damage done; . . . should the law-breaker refuse redress, decline to submit to the ruling of the court, thereby adding yet another breach of the law to the original violation," the executionary measure will be applied to the law-breaker.

Thus Kelsen is able to conceive the present international status as a legal order, to wit, as a primitive, "uncentralized," legal order. The last step in the process of centralization will, if we follow the author, be an organic unity and a universal community of law—a world state. But even today Kelsen, as monist, conceives the international order and the legal orders of the single states as a unitary system, and international law as the hypothetical basic norm of the legal order.[11] If one recognizes different legal orders, he argues, one has to recognize one order as higher than others; and, he asserts, the international legal order is the highest order of all.

Kelsen, the monist, defends this contention vigorously. To deny his view, he declares, means to deny the legal coördination of the legal orders of single states. Such denial implies exclusive recognition of the single state order and acceptance of the standpoint of primitive peoples who regard strangers as barbarians. Dualists try to overcome such a solipsism and state-subjectivism by asserting that the coördination of the legal orders of single states is guaranteed by the mutual recognition of the states. Kelsen insists that dualists draw the consequences from their deductions and conceive the mutual recognition of states as a mutual grant and delegation of authority to create norms. Thus it appears that even those who do not consider international law as the highest phase of a system of law ought to arrive at a unitary conception of the legal order.[12]

[10] "The Legal Process and International Order," *The New Commonwealth*, May, 1934, pp. 104–105, June, 1934, pp. 122–123. The same article in German: "Die Technik des Völkerrechts und die Organisation des Friedens," *Zeitschrift für öffentliches Recht*, 1934, pp. 240–255. French translation: "La Technique du droit international et l'organisation de la paix," *Revue de Droit International et de Legislation Comparée*, 1934, pp. 5–24.

[11] Verdross considers it an *axiom* rather than a *hypothesis* to conceive international law as the basic norm. "Le fondement du droit international," in *Academie de Droit International, Recueil des Cours* (1927), Vol. 1, pp. 247 ff.

[12] In fact, Hans Morgenthau arrives at this conclusion, *La réalité des normes, en particulier des normes du droit international* (1934), p. 218.

Kelsen concedes that from a purely logical viewpoint it is permissible to regard either international or state law as the basic law. Nevertheless, he advocates his own theory in view of the consequences of a contrary reasoning which would make international law dependent on state law and so deny that international law is law.

The denial of the unity of legal orders is often based on the alleged contradiction between international law and state law. The alleged *contradiction*, however, turns out to be merely a *conflict* between higher and lower norms.[13] In state law, a lower norm which is incompatible with a higher norm is usually not void in itself, but it is generally annihilable; also a norm of state law which is incompatible with international law is annihilable, provided that particularist norms provide for its annihilation.

According to Kelsen, it is international law which, as superior law, delimits the spheres within which the norms of single states are valid. It is international law which coördinates and delimits the legal orders of the single states. Thus it is no longer correct to speak of the "competence of competence" of states. But as long as international law has not taken hold of a subject-matter, states may exercise their jurisdiction over that subject. In doing so, states act as organs of the international legal community; if they conclude treaties with each other, they do so as organs of the international community.

The universal legal system which is conceived as an eventuality by Kelsen is at this time only intellectually discernible. But Kelsen, the purist, insists that its conception frees the states from the dogma of sovereignty and brings them into a system of relationships. By the elimination of the dogma of sovereignty, the "pure theory of law" turns against an imperialistic ideology which is hostile to international law, and champions a centralized international organization. The possibility of such a political effect, Kelsen concludes, does not impair the theoretical value of the "pure theory of law," just as the importance of natural science is not impaired by the fact that it makes possible the establishment of technique.

Kelsen considers himself a positivist in his aversion for natural law, a monist in his attack on conceptions of state sovereignty, and a purist in his endeavor to deal with an abstract body of law. But subconsciously he is also a deontologist, *i.e.*, a philosopher who sees only human duties, obligations, perhaps also authorizations, but no rights. Thus it is clear that Kelsen's "pure theory of law" is as well a positivistic, monistic, and deontological theory as a pure theory of law.

It is neither desirable nor possible to deal in this study with all the

[13] J. Walter Jones, *loc. cit.*, p. 12, deviates on this point from Kelsen.

arguments which have been advanced in the discussion of Kelsen's positivism, monism, and purism.[14] Nevertheless, in the following remarks an attempt is made briefly to review such arguments and to examine Kelsen's deontological conception.

In his positivism, he tries to establish a basis for international law which is free from concepts of an absolute natural law.[15] Assurances of "natural rights" (of which individuals or states cannot be deprived) sound strange in a time in which revolutions sweep away so-called "unalterable rights" and in which such revolutionary measures are recognized as creating law. But other legal problems which are caused by the employment of higher law concepts in legal life, as, for instance, the problem of "equity" in national and international adjudication—problems which necessarily involve the conflict between the school of natural law and the positivists—are overlooked or denied by Kelsen.

Kelsen also claims to have built up a "pure" theory of law. An "impure" theory of law is, according to him, a theory which includes ingredients of psychology and biology, ethics and theology, or a theory which is consciously or unconsciously based on "ideologies," as, for instance, on imperialistic conceptions. But analytical jurists have always tended to separate law from other sciences, though most of them would not attempt to consider a legal system as something absolute, as an airtight system, without consideration of the man whom it concerns. It is evident that Kelsen rejects imperialistic ideologies in order to substitute his own internationalist ideology. In his *Reine Rechtslehre*, he admits that the reason he attaches so much importance to his theory of international law is that it destroys the imperialistic "dogma" of sovereignty, permits a unitary legal conception of the world, and might serve to create a world organization. Hence, Kelsen did not succeed in developing a

[14] For a bibliography of the "Pure Theory of Law," see Dr. Rudolf Aladar Métall, *Bibliographie der Reinen Rechtslehre;* Appendix to Kelsen, *Reine Rechtslehre*, pp. 155–222.

[15] Modern philosophers tend to differentiate between absolute natural law, relative natural law, and positive law. While adherents of the school of natural law usually divide law into two classes, the partition of law into three classes goes back to *I. de jure nat.* (1, 2) and to Thomas Aquinas' *Summae Theologiae*, I, 2, q. 91, art. 2–4, and I, 2, q. 94, art. 4. To the degree to which modern writers recognize divine or eternal law, they speak of "absolute natural law." They conceive of constitutional, statutory law, decrees, ordinances, judge-made law (as far as there is such), and customary law as "positive law." "Relative natural law" is considered as law superimposed on positive law. It contains, for instance, "the general principles of law recognized by civilized nations" (Article 36, Statute of the Permanent Court of International Justice). It furnishes the basis for a judicial decision *ex aequo et bono*. Relative natural law, therefore, is a body of norms which are conceived to be the standard of the legal life of a people or a family of nations at a certain period.

"pure" theory of law any more than other philosophers before him.[16] But this failure, taken in itself, would not impair the value of his theories. As stated by Mr. Jones:[17] ". . . if in justifying the supremacy of international law by reference to ethical and political postulates, Kelsen, like Austin in his digression into Utilitarianism, leaves his chosen path of logical deduction, this at least may be said—that without his ideal of an international community, international law would never have come into existence."

Kelsen's conception of a unitary legal system, headed by international law, has been criticized both often and sharply. Even though many would be inclined to accept a monistic legal theory, the fact cannot be overlooked that, according to Kelsen's own statement, the choice of international law as the hypothetical fundamental norm is purely arbitrary. It has been said of Kelsen's reasoning[18] that it "seems to fly in the face of the facts of the present day." But only the future can tell whether or not Kelsen idealized the present international status.

It remains to consider Kelsen's deontological conception. As purist, Kelsen believes that he has eliminated the ideological element from his legal theory. He is led to his deontological conception by his Neo-Kantian schooling, and his views are a reaction to a time in which insistence on rights was usual and in which duties to the community were neglected, or even, as in international life, denied. Kelsen turns from a conception which over-emphasizes rights to a theory which considers duties, obligations, as primary norms, and authorizations (*Berechtigungen*) as secondary norms. From a purely logical point of view, these secondary norms are even irrelevant for Kelsen's theory. One may raise the question whether a legal system which balances rights and duties would not be of greater service.

Thus, a relativist approach to the questions involved might force one to question Kelsen's success as positivist, to discard his purism as well as his deontological conception, and to refer his monistic conception of the world order to the field of political speculation. Nevertheless, the author of the *Reine Rechtslehre* must be credited with at least one achievement. With the irresistible force of exact logical reasoning, he analyzes weak points in present-day juristic conceptions and thus contributes to steady advancement in legal philosophical thinking.

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[16] See Karl Bergbohm, *Jurisprudenz und Rechtsphilosophie* (1882), Vol. 1, p. 279.
[17] *Loc. cit.*, p. 19.
[18] J. Walter Jones, *loc. cit.*, p. 13.

The Contribution to International Legislation of the Nineteenth Session of the International Labor Conference. It is proposed in this article to consider the Draft Conventions adopted by the International Labor Conference at its Nineteenth Session[1] primarily with a view to illustrating the nature of the contribution which the Conference is making to international legislation and the manner in which problems which have some general bearing upon the development of international law and organization arise for consideration in connection with International Labor Conventions. It is unnecessary for this purpose to recapitulate the composition, powers, and procedure of the International Labor Conference, or to review that part of the activities of its Nineteenth Session which did not lead to the immediate adoption of Draft Conventions. It is therefore necessary to warn the reader that this article is not an attempt to give him a general impression[2] of the Conference. It does not attempt to review the general discussions of social policy based upon the director's report. It does not describe the Unemployment (Young Persons) Recommendation, 1935,[3] an important pronouncement which is one of the most valuable results of the Conference, but which, being a Recommendation, is intended "to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise,"[4] and is

[1] The Nineteenth Session of the International Labor Conference was held in Geneva, June 4–June 25, 1935. Fifty-two of the 62 members of the Organization were represented, 32 of them by complete delegations including government, employers', and workers' representatives. The United States and the U.S.S.R. were represented as members of the Organization for the first time, the United States by a complete delegation, the U.S.S.R. by an observer. The Conventions and Recommendations adopted bring the totals of Conventions and Recommendations to 49 and 45, respectively. On September 1, 1935, 32 Conventions were in force, 44 members had ratified one or more Conventions, and 661 ratifications had been registered.

[2] For such an impression, see "The Nineteenth Session of the International Labor Conference," *International Labour Review*, Vol. 32, No. 3, pp. 290–343.

[3] For which see (1) International Labor Conference, Nineteenth Session, Geneva, 1935, Report III, *Unemployment Among Young Persons*, and (2) International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 2, pp. i–xxx; No. 6, pp. 35–62; No. 10, pp. i–xx; No. 25, pp. i–xli; No. 29, pp. 590–596; No. 30, pp. 598–607 and 614–631; No. 32, pp. 639–641 and i–ix; and No. 34, pp. 681–683.

[4] Article 19 (1) of the constitution of the Organization. The constitution of the International Labor Organization formed Part XIII of the Treaty of Versailles of June 28, 1919 (Articles 387–427), Part XIII of the Treaty of St. Germain of September 10, 1919 (Articles 332–372), Part XII of the Treaty of Neuilly of November 27, 1919 (Articles 249–289), and Part XIII of the Treaty of Trianon of June 4, 1920 (Articles 315–355). In view of the fact that different groups of states are parties to these four treaties, and that the membership of the Organization now includes

therefore incapable of becoming by ratification the source of international obligations. This article, further, gives no account of the preliminary discussions which will probably lead to the adoption of Draft Conventions in future years; nor does it review the work of the Conference in supervising the application of existing Conventions. Its scope is limited strictly to a discussion of the five Draft Conventions actually adopted at the Nineteenth Session, i.e., the Forty-Hour Week Convention, 1935; the Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935; the Maintenance of Migrants' Pension Rights Convention, 1935; the Underground Work (Women) Convention, 1935; and the Hours of Work (Coal Mines) Convention (Revised), 1935.[5] Certain of these instruments raise far-reaching questions of economic and social policy; but discussion of such questions would not be appropriate in what is intended as a legal commentary.

The Forty-Hour Week Convention, 1935. The question of the forty-hour week has been under consideration by the International Labor Conference since 1933. In that year, the Conference, which had before it a report upon the subject from a special preparatory conference of government, employers', and workers' delegates, decided not to adopt any Convention after a single discussion, but to refer the matter to governments by means of the normal questionnaire procedure.[6] In 1934, two proposed Conventions, one covering industry and the other commerce and offices, were under consideration, but never came to a final vote, a quorum being lacking on a test vote in the Conference on the scope of the industry Convention. The constitution of the Organization is somewhat strict in its requirements as to a quorum, Article 17 (3) providing that "the voting is void unless the total number of votes cast is equal to half

28 states which were not parties to any of them, it has become the practice to refer to these provisions as the "constitution of the Organization," and to adopt a uniform numbering of the articles running from 1–41. Upon this subject, see E. J. Phelan, "The United States and the International Labor Organization," *Political Science Quarterly*, Vol. 50, No. 1, March, 1935, especially at pp. 107–112. The constitution of the Organization is published by the International Labor Office in a booklet entitled *The Constitution and Standing Orders of the International Labour Organization.*

[5] The texts of these Conventions are available in International Labor Office, *Official Bulletin*, Vol. 20, No. 3.

[6] For the 1933 discussions, see (1) International Labor Conference, Seventeenth Session, Geneva, 1933, Report V, *Reduction of Hours of Work*, Report of the Tripartite Preparatory Conference, and (2) International Labor Conference, Seventeenth Session, Geneva, 1933, *Record of Proceedings*, at pp. 53–59, 61–64, 71–74, 76–121, 123–125, 339–406, 429–431, and 662–674. The minutes of the Conference Committee on the Reduction of Hours of Work are not published, but are available in the archives of the International Labor Office.

the number of the delegates attending the Conference." The quorum being so high, it is sometimes easier to defeat a proposal by abstaining from voting than by voting in the negative. This is what happened in 1934, and with a view to finding a way out of the *impasse* Signor de Michelis, the Italian government delegate, suggested that in the following year the Conference should adopt a *convention de principe*, proclaiming the general principle of the forty-hour week, but not requiring immediate and general application of the principle, and should then proceed in subsequent years to make arrangements for the application of the principle, with any necessary exceptions or modifications, to particular classes of employment.[7]

The International Labor Office felt some hesitation as to whether a Convention intended for ratification by governments with a view to creating international obligations was the type of instrument best suited for the enunciation of a declaration of principle of this kind.[8] It felt that the analogy of national legislation under which a principle is expressed in statutory form and left to be applied gradually by administrative orders was misleading. Such an analogy would be valid only if members of the Organization were prepared to vest in the Conference power to apply the principle at its discretion to particular industries in such a manner as to bind members independently of subsequent ratification. This would have involved the creation of a real international legislature competent to regulate hours of work, to the extent of reducing them to forty per week, thoughout the territories of members ratifying the *convention de principe*. Any scheme of this kind was obviously impracticable, and it was impossible for any *convention de principe*, unless it did this, to bind members ratifying to anything determinate at all, since they would always be at liberty to exercise their own free judgment upon the merits of any subsequent proposals relating to particular classes of employment. The International Labor Office therefore shrank from the suggestion that the form of a Convention should be used for what was in substance a proclamation of future policy and proposed to the Conference that it embody its declaration of principle in a special resolution and link a series of Con-

[7] For the 1934 discussions, see (1) International Labor Conference, Eighteenth Session, Geneva, 1934, Report I, *Reduction of Hours of Work*, and (2) International Labor Conference, Eighteenth Session, Geneva, 1934, *Record of Proceedings*, at pp. 39–50, 53–87, 90–92, 330–339, 476–482, 489–501, 552–572, and 664. The minutes of the Conference Committee on the Reduction of Hours of Work are not published, but are available in the archives of the International Labor Office.

[8] The objections and proposals of the Office were stated in International Labor Conference, Nineteenth Session, Geneva, 1935, Report VI, *Reduction of Hours of Work*, Vol. 1, *Public Works Undertaken or Subsidized by Governments*, at pp. 13–16.

ventions applying to particular classes of employment to this resolution by means of an appropriately worded common preamble. The Conference did not share the scruples of the Office and preferred to give the intended declaration of principle greater solemnity of form by expressing it as a Convention.[9] The Convention has a preamble and one operative article, the text of which is as follows:

> Each member of the International Labor Organization which ratifies this Convention declares its approval of:
>
> (a) the principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence; and
>
> (b) the taking or facilitating of such measures as may be judged appropriate to secure this end;
>
> and undertakes to apply this principle to classes of employment in accordance with the detailed provisions to be prescribed by such separate Conventions as are ratified by that member.

It is not proposed to discuss in detail the complicated negotiations as the result of which the article was adopted in this form, but a few points are worthy of notice. In the first place, "standard of living" does not necessarily mean weekly, monthly, or yearly income. Certain delegates, as the Committee report says, "gave the expression a wider interpretation, taking account of all the economic and other factors which affect the standard of living and of the various means—direct and indirect—by which that standard might be maintained."[10] The Conference subsequently, on report from the same Committee, adopted a resolution in which it recited "that the application of this principle should not as a consequence reduce the weekly, monthly, or yearly income of the workers, whichever may be the customary method of reckoning, nor lower the standard of living." But in view of the withdrawal of amendments to the text of the Convention expressed in similar terms, this resolution cannot be relied upon as being an authentic interpretation of the Convention. In the second place, the Convention does not require the maintenance of the standard of living irrespective of whatever other forces may be determining current conditions of economic life. It simply provides that the principle of the forty-hour week shall be applied in such a manner that

[9] For the discussions in the Conference leading to the adoption of the *convention de principe*, see International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 6, pp, 62–71; No. 7, pp. 73–110; No. 8, pp. 112–134; No. 12, pp. 173–197; No. 13, pp. ii–iii; No. 14, pp. 216–234 and 253–254; No. 23, pp. vii–xiii; No. 25, pp. 512–530 and pp. xlii–xliv; and No. 30, pp. 610–612. The minutes of the Conference Committee on the Reduction of Hours of Work are not published, but are available in the archives of the International Labor Office.

[10] *Provisional Record*, No. 23, p. xiv.

the standard of living shall not be reduced in consequence of the application of the principle. In the third place, there is an implication in clause (b) that no direct state intervention may be necessary in cases in which the result in view can be obtained by collective agreements concluded, where necessary, with governmental assistance. In any case, ratification of the Convention involves no specific obligations until a later Convention applying to a particular class of employment is ratified.

It is not for the lawyer to pass judgment upon the value of an instrument of this kind. As a stage in the history of a far-reaching movement, it may prove of vastly greater significance than many an instrument of faultless drafting and determinate legal import, and its adoption in the form of a Convention has at least one determinate legal result of importance. All the members of the Organization are in virtue of the constitution of the Organization required to submit it for the consideration of their national competent authorities within certain time limits, and it is thus likely to receive a degree of attention which would never be given to a mere resolution. The general significance of the Convention was well stated by the director of the International Labor Office in his speech at the closing sitting of the Nineteenth Session of the Conference when he declared that its effect was to substitute a new objective for the standard of the eight-hour day and forty-eight-hour week laid down by Article 41 of the constitution of the Organization as among the methods and principles for regulating labor conditions regarded by the framers of the Constitution as of special and urgent importance.

The Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935. The Nineteenth Session of the Conference also adopted the first of the series of industrial Conventions through which it is intended that practical effect shall be given to the principle enshrined in the Forty-Hour Week Convention. This Convention applies to continuous shift workers in automatic glass-bottle works.[11] A similar Convention applying to continuous shift workers in automatic sheet-glass works[12] was adopted at the

[11] For this Convention, see (1) International Labor Conference, Nineteenth Session, Geneva, 1935, Report VI, *Reduction of Hours of Work*, Vol. 4, *Glass Bottle Manufacture*, and (2) International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 31, pp. iii–v, x–xii, and xxxi–xxxviii; No. 32, pp. ix–xii; No. 33, pp. 649–658; and No. 34, pp. 683–688. The minutes of the Committee on the Reduction of Hours of Work and Sub-Committee on Glass-Bottle Manufacture of the Nineteenth Session of the Conference are not published, but are available in the archives of the International Labor Office.

[12] For this Convention, see (1) International Labor Conference, Seventeenth Session, Geneva, 1933, *Methods of Providing Rest and Alternation of Shifts in Automatic Sheet-Glass Works;* (2) International Labor Conference, Seventeenth Session, Geneva, 1933, *Record of Proceedings*, at pp. 136–146, 154–155, and 656–661; (3) In-

Eighteenth Session, in the agenda of which the question of the regulation of hours of work in automatic sheet-glass works had been included as an item distinct from the general question of the reduction of hours of work. The ground for limiting the scope of these Conventions to continuous shift workers was that technical considerations make it necessary to apply to such workers special rules involving slightly longer hours than those laid down for other workers, since under a four-shift system a weekly average of forty-two instead of forty hours is necessary to cover the 168 hours in the week. It was therefore proposed to begin by laying down rules for continuous shift workers and to leave for later consideration the shorter hours to be worked by other categories. It is contemplated that at a future date a further Convention shall be adopted applying to all other workers employed in glass works.

The scope of the Reduction of Hours of Work (Glass-Bottle Works) Convention is defined in Article I, paragraph 1 of which applies it to "persons who, in glass works where bottles are produced by automatic machinery, work in successive shifts and are employed in connection with generators, tank furnaces, automatic machinery, annealing furnaces, and operations accessory to the working of the above." Paragraph 2 of the same article defines the term "bottles" as including "similar glass articles produced by the same processes as bottles." Articles 2, 3, and 4 of the Convention are identical with the corresponding articles of the Sheet-Glass Works Convention, 1934. Under Article 2, the persons to whom the Convention applies are to be employed under a system providing for at least four shifts; the hours of work of such persons are not to exceed an average of 42 per week; this average is to be calculated over a period not exceeding four weeks; the length of a spell of work is not to exceed eight hours, and the interval between two spells of work by the same shift is not to be less than sixteen hours, save that it may, where necessary, be reduced on the occasion of the periodical change-over of shifts. Exceptions are provided by Article 3 for cases of accident, actual or threatened, urgent work to be done to machinery or plant, *force majeure*, and cases in which it is necessary to make good the unforeseen

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ternational Labor Conference, Eighteenth Session, Geneva, 1934, Questionnaire III, *Methods of Providing Rest and Alternation of Shifts in Automatic Sheet-Glass Works;* (4) International Labor Conference, Eighteenth Session, Geneva, 1934, Report III, *Methods of Providing Rest and Alternation of Shifts in Automatic Sheet-Glass Works;* and (5) International Labor Conference, Eighteenth Session, Geneva, 1934, *Record of Proceedings*, at pp. 283–287, 402–404, 603–611, and 673–676. The minutes of the Committees on Glass Works of the Seventeenth and Eighteenth Sessions of the Conference are not published, but are available in the archives of the International Labor Office.

absence of one or more members of a shift; but it is specified that exceptions may be permitted in such cases "only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking." Adequate compensation for all additional hours worked in virtue of these exceptions is to be "granted in such a manner as may be determined by national laws or regulations or by agreement between the organizations of employers and workers concerned." It is believed that this provision imposes an absolute obligation to grant compensation, and that it is only the manner of such compensation that is left to be determined by national laws or regulations or by agreement between the organizations of employers and workers concerned. Where there is no agreement between the organizations concerned providing for adequate compensation, there will therefore be a definite obligation upon the member to provide for such compensation by law or regulation.

Article 4 contains provisions relating to enforcement similar to those contained in other International Labor Conventions upon hours of work. Every employer is to be required "to notify, by the posting of notices in conspicuous positions in the works or other suitable place, or by such other method as may be approved by the competent authority, the hours at which each shift begins and ends." Employers are "not to alter the hours so notified except in such a manner and with such notice as may be approved by the competent authority" and are "to keep a record in the form prescribed by the competent authority of all additional hours worked in pursuance of Article 3 of this Convention and of the compensation granted in respect thereof." Article 5 was included to meet the apprehensions of certain members of the Workers' group, and provides that "nothing in this Convention shall affect any custom or agreement between employers and workers which ensures more favorable conditions than those provided for by this Convention."

It should be noted that the operative provisions of this Convention make no reference to the maintenance of the standard of living, but that there is an allusion to the matter in the preamble, which recites that "the question of the reduction of hours of work is the sixth item on the agenda of the session" and that the Conference "confirms the principle laid down in the Forty-Hour Week Convention, 1935, including the maintenance of the standard of living," and then announces that the Conference has "determined to give effect to this reduction forthwith in the case of glass-bottle works." It is believed that the resultant position is as follows. A member which ratifies the Reduction of Hours of Work (Glass-Bottle Works) Convention without having ratified the Forty-Hour Week Convention is under no obligations in respect of the maintenance of the standard of living, the reference to the matter in the preamble being in-

adequate to impose any such obligation. On the other hand, a member which ratifies both the Reduction of Hours of Work (Glass-Bottle Works) Convention and the Forty-Hour Week Convention will by its ratification of the Forty-Hour Week Convention have declared its approval of "the principle of a forty-hour week applied in such a manner that the standard of living is not reduced in consequence" and have undertaken to apply "this principle" to classes of employment in accordance with the detailed provisions to be prescribed by such later Conventions as it may ratify. Such a member will therefore be required to regulate hours of work in glass-bottle works (1) in accordance with the detailed provisions relating to hours set forth in the Reduction of Hours of Work (Glass-Bottle Works) Convention, and (2) in virtue of the Forty-Hour Week Convention, in such a manner that the standard of living is not reduced in consequence of the application of the principle of the forty-hour week.

The Nineteenth Session of the Conference also considered Draft Conventions relating to the application of the forty-hour week in favor of persons employed on public works, in the building and contracting industry, in iron and steel works, and in coal mines. The required two-thirds majority was not secured for the adoption of these Conventions, but their further consideration has been included in the agenda for next year's session. The application of the principle to further industries is also under discussion.

The Maintenance of Migrants' Pension Rights Convention, 1935. This Convention presents the greatest interest for the international lawyer of possibly any achievement of the Nineteenth Session, or for that matter, of any other session of the Conference.[13] Unlike the majority of the International Labor Conventions, the object of which is to make a matter of

[13] For this Convention, see (1) International Labor Conference, Eighteenth Session, Geneva, 1934, Report IV, *Maintenance of the Rights in Course of Acquisition and the Acquired Rights of Migrant Workers under Invalidity, Old-Age, and Widows' and Orphans' Insurance;* (2) International Labor Conference, Eighteenth Session, Geneva, 1934, *Record of Proceedings*, at pp. 435–450 and 612–638; (3) International Labor Conference, Nineteenth Session, Geneva, 1935, Questionnaire I, *Maintenance of Rights in Course of Acquisition and of Acquired Rights under Invalidity, Old-Age, and Widows' and Orphans' Insurance on Behalf of Workers who Transfer their Residence from one Country to Another;* (4) International Labor Conference, Nineteenth Session, Geneva, 1935, Report I, *Maintenance of Rights in Course of Acquisition and of Acquired Rights under Invalidity, Old-Age, and Widows' and Orphans' Insurance on Behalf of Workers who Transfer their Residence from one Country to Another;* and (5) International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 21, pp. i–xxxi; No. 26, pp. 551–559; No. 27, pp. 561–571 and i–x; and No. 30, pp. 612–614. The minutes of the Maintenance of Pension Rights Committees of the Eighteenth and Nineteenth Sessions of the Conference are not published, but are available in the archives of the International Labor Office.

international obligation certain general standards of industrial regulation, the object of this Convention is to create rights on behalf of individuals who in the course of their industrial career are insured in more than one country, and for this purpose to regulate certain relationships between such individuals and the insurance institutions in respect of their dealings with such individuals. Inasmuch as the proposed regulation of these relationships made it necessary to consider a group of questions not adequately dealt with for the purpose of a Convention of this character in the standard articles customarily inserted in International Labor Conventions, and which have a certain general importance in relation to the future developments of international legislative technique, and also inasmuch as these questions should be of special interest in the United States since the adoption of the Social Security Act, 1935, whether the United States becomes a party to the Convention or not, because the Convention should present analogies of great interest to those concerned with the coördination of state insurance schemes, it has been deemed best to treat this question at greater length in a separate article.[14]

Underground Work (Women) Convention, 1935. The Underground Work (Women) Convention[15] is a useful addition to the group of International Labor Conventions which formulate the basic standards of protective legislation. It is true that there are few countries of appreciable industrial importance in which women are still employed underground in mines. But the problem has a certain importance for colonial territories; and in view of the fact that the adoption of a relatively non-controversial Convention of this character places little extra strain upon a permanent Organization which is in any case holding regular conferences for the discussion of more urgent matters, and does not in any way prejudice the discussion of such matters, there is everything to be said for completing the existing body of international labor legislation by the adoption

[14] C. Wilfred Jenks, "Migrants' Pension Rights Convention, 1935," *Political Science Quarterly*, June, 1936.

[15] For this Convention, see (1) International Labor Conference, Eighteenth Session, Geneva, 1934, Report VI, *Employment of Women on Underground Work in Mines of all Kinds;* (2) International Labor Conference, Eighteenth Session, Geneva, 1934, *Record of Proceedings*, at pp. 289–295 and 647–649; (3) International Labor Conference, Nineteenth Session, Geneva, 1935, Questionnaire II, *Employment of Women on Underground Work in Mines of all Kinds;* (4) International Labor Conference, Nineteenth Session, Geneva, 1935, Report II, *Employment of Women on Underground Work in Mines of all Kinds;* (5) International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 11, pp. xi–xix; No. 19, pp. 373–379 and xii–xv; and No. 27, pp. 576–579. The minutes of the Underground Work Committee of the Eighteenth and Nineteenth Sessions of the Conference are not published, but are available in the archives of the International Labor Office.

of Conventions relating to questions already adequately covered by national legislation in the majority of countries.

The Convention has three substantive articles. Article 1 defines the term "mine" as including "any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth." The words "whether public or private" were added by the Conference committee *ex abundati cautela* on the ground that in certain earlier Conventions[16] it had been thought necessary to specify that they applied to public undertakings; but it is believed that even in the absence of such a provision it is impossible to read into an International Convention any implied exception in favor of public undertakings, whatever the position may be in this respect under any particular municipal legal system.[17] The only other point emphasized during the discussion of this article was that the words "for the extraction of any substance" indicate that the definition covers only undertakings the object of which is the extraction of some useful substance and not merely the making of a hole.[18] Article 2 embodies the general prohibition which is the object of the Convention, and provides that "no female, whatever her age, shall be employed on underground work in any mine." Article 3 makes provision for exceptions. Such provision is normally made in International Labor Conventions in one of two forms. In some cases, a Convention includes an express provision that it shall not apply to certain persons or in certain circumstances. In other cases, a Convention leaves to each party a discretion not to

[16] Some Conventions, notably (1) the Hours of Work (Industry) Convention, 1919, Article 2, and five Conventions the scope provisions of which are modelled thereupon, and (2) the Minimum Age (Sea) Convention, 1920, and five Conventions which define "vessel" in the same manner as the Minimum Age (Sea) Convention, specify that they apply to persons employed in public undertakings or on public vessels. Some Conventions, e.g., the Unemployment Provision Convention, 1935, Article 2 (2) (c), implicitly include such persons generally by excluding them in specified cases. In other Conventions, e.g., the White Lead (Painting) Convention, 1921, the Night Work (Bakeries) Convention, 1925, the Sickness Insurance (Industry, etc., and agriculture) Conventions, 1927, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Pension Insurance Conventions, 1933, the Sheet-Glass Works Convention, 1934, the Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935, and the Hours of Work (Coal Mines) Convention (Revised), 1935, there is no express provision, but the scope of the Convention is stated in perfectly general language.

[17] On the relevance of municipal rules of interpretation for the interpretation of International Labor Conventions, see P.C.I.J., Series C, Pleadings, Oral Statements and Documents, No. 60, "Interpretation of the Convention Concerning Employment of Women During the Night," *Mémoire du Bureau International du Travail*, at pp. 172–173, and statement by Mr. Phelan at pp. 209–210.

[18] See Committee Report, International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 11, at p. xiii.

apply its provisions to certain persons or circumstances. In the Convention under discussion, the latter method is adopted, and Article 3 provides that "national laws or regulations may exempt from the above prohibition" four classes of females: (a) "females holding positions of management who do not perform manual work;" (b) "females employed in health and welfare services;" (c) "females who, in the course of their studies, spend a period of training in the underground parts of a mine;" and (d) "females who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation."

The Hours of Work (Coal Mines) Convention (Revised), 1935. The Hours of Work (Coal Mines) Convention was first adopted by the Conference at its Fifteenth Session in 1931,[19] but has never come into force. The object of revising it was to remove certain technical difficulties which have been partly responsible for the failure to ratify of the countries which participated in the pre-1931 negotiations. The modifications made are of no general interest to international lawyers. As the Convention was originally adopted at a time when the United States was not a member of the International Labor Organization, conditions in the United States were not considered when it was being prepared, and the method which it prescribes for the calculation of time spent in the mine is entirely different from that in vogue in the United States. This being so, and the revised Convention[20] having been modified only in technical details, it is not anticipated that the United States will be able to ratify.[21] But it is expected that the question of hours of work in coal mines will be

[19] For the 1931 Convention, see (1) International Labor Conference, Fourteenth Session, Geneva, 1930, Report III, *Hours of Work in Coal Mines*, with supplement thereto; (2) International Labor Conference, Fourteenth Session, Geneva, 1930, *Final Record*, Vol. 1, at pp. 341–401, 485–498, and 809–849; (3) International Labor Conference, Fifteenth Session, Geneva, 1931, Questionnaire II, *Hours of Work in Coal Mines;* (4) International Labor Conference, Fifteenth Session, Geneva, 1931, Report II, *Hours of Work in Coal Mines;* (5) International Labor Conference, Fifteenth Session, Geneva, 1931, *Final Record*, Vol. 1, at pp. 367–432, 479–483, 666–717, and 748–757. The minutes of the Hours of Work in Coal Mines Committees of the Fourteenth and Fifteenth Sessions of the Conference are not published, but are available in the archives of the International Labor Office.

[20] For the revised Convention, see (1) International Labor Conference, Nineteenth Session, Geneva, 1935, Report VII, *Partial Revision of the Hours of Work (Coal Mines) Convention, 1931*, and (2) International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 18, pp. iii–xv; No. 22, pp. 454–462; No. 23, pp. xxiv–xxxii; and No. 27, pp. 579–581. The minutes of the Committee on the Partial Revision of the 1931 Convention of the Nineteenth Session of the Conference are not published, but are available in the archives of the International Labor Office.

[21] See Mr. Hamilton's speech in International Labor Conference, Nineteenth Session, Geneva, 1935, *Provisional Record*, No. 32, at pp. 638–639.

reconsidered in the near future as part of the general problem of the reduction of hours of work, and an opportunity will then occur of drafting a new Convention in which adequate account shall be taken of conditions in the United States.

The Drafting of International Labor Conventions. Certain features of the drafting of recent International Labor Conventions may be of interest to students of international legislation in general. The draftsmanship of international legislation is a technique which is still in its infancy, and some attempt to attain uniformity in methods of arrangement, definitions, translations of terms recurrent in bilingual texts, standard articles, etc., is highly desirable. There has as yet been little coördination of effort among those concerned with the drafting of different groups of International Conventions, and to some extent divergencies between the subject-matter of different groups of Conventions make differences of method inevitable, but it is believed that there are a few features of recent International Labor Conventions which deserve to be widely copied. Every International Labor Convention now prescribes a mode of citation by a short title. It has been found most convenient to state the short title as a conclusion to the preamble to each Convention in the following form: "The General Conference of the International Labor Organization, . . . adopts this twenty-second day of June of the year nineteen hundred and thirty-five, the following Draft Convention which may be cited as the Maintenance of Migrants' Pension Rights Convention, 1935." In the interest of clarity and neatness of arrangement, articles are sub-sectioned wherever possible, and all paragraphs and sub-paragraphs are suitably numbered or lettered in accordance with a logically defensible system applied with reasonable consistency. Care is taken to use the form of a proviso in proper cases only and not to use it for the statement of conditions. One of the standard articles defines the legal consequences of the revision of a Convention, but reserves to the International Labor Conference power to modify the operation of the normal rules by making provision to that effect in the revising Convention. There is, of course, still great scope for improvement. But it is submitted that it is upon the foregoing lines that a concerted attempt should be made to better the form and technique of all international legislation.

C. WILFRED JENKS.

Geneva, Switzerland.

Switzerland and the League of Nations; A Chapter in Diplomatic History. On December 23, 1921, the Swiss Federal Council received a note from the French Embassy to the effect that the Council of the League of Nations had entrusted the French government with the trans-

portation of the international troops called to supervise the plebiscite to be held in the contested area between Poland and Lithuania. It had been decided, the note stated, to transport the Belgian, British, and Spanish troops through Switzerland, and France now requested the Swiss government to grant them free passage. Although the contingents were not to participate in war, but only to watch over a plebiscite to be held under the auspices of the League, the Swiss government refused the permission sought. At the time of the plebiscite in the Saar territory, the Federal Council took a similar attitude. It refused to permit Italian troops to pass through Swiss territory on their way to the Saar Valley.

How could Switzerland, a member of the League of Nations, take such a stand and maintain it? How, one may further ask, did Switzerland succeed in entering the League with its neutrality left intact, seeing that Article 1 of the Covenant states that only such nations can become members of the League "as shall accede without reservation to this Covenant"?

The question that confronted the Swiss Federal Council in 1919 was: How is the incompatibility of Swiss neutrality with membership in the League of Nations to be overcome? The Council was anxious for Switzerland to become a member of the League. It knew, however, that, peace-loving though the Swiss people are, and apt to favor any instrument promising to bring about universal peace, they would not under any circumstances sacrifice their country's historic policy of neutrality guaranteed by the Powers.

The question, therefore, arose: Could the Great Powers be induced to recognize specifically in the Covenant the fact of Swiss neutrality? That would have been an ideal solution. The Federal Council, therefore, addressed the Paris Conference on February 8, 1919, in part as follows: "At the moment when the representatives of the Powers, assembled at Paris, are about to build the foundations of a new international organization, the Swiss Federal Council desires to recall the origin and character of Swiss neutrality. It considers it politic to affirm the necessity of this secular institution, and to point out the part it may be called upon to play in the future." The memorandum went on to point out the permanent and stable character of Swiss neutrality; and it emphasized the necessity of this neutrality in the interest of the peace of Europe in general, and of both the Swiss Confederation and the forthcoming League in particular.

This memorandum was, as a matter of fact, a project for a League of Nations as the Swiss government conceived it. Apparently, however, it carried little weight with the Great Powers when the final Covenant was drawn up. The latter seemingly left no loophole through which Switzerland might enter the League with her neutrality left intact. Article 20 of the final document stipulated that "the members of the League sev-

erally agree that this covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof . . . . " This provision might easily be interpreted to mean that the Helvetic Republic, in joining the League, had renounced its traditional policy of neutrality.

Fortunately for Switzerland, however, one of the Great Powers, the United States of America, also had a traditional foreign policy toward one part of the world which seemingly was inconsistent with the Covenant. Accordingly, for the benefit of the United States, which was as determined not to give up the Monroe Doctrine as was Switzerland to adhere to her policy of neutrality, Article 21 was inserted. This reads: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe Doctrine, for securing the maintenance of peace."

Did not this offer the desired loophole? Could not Swiss neutrality be considered an international engagement for securing the maintenance of peace? The Federal Council thought so. Would the Great Powers share the opinion? How was Switzerland to obtain assurances that her neutrality was so regarded?

Here again circumstances favored Switzerland. France, being desirous of getting rid of the economic servitudes imposed upon Savoy by the Congress of Vienna, had started *pourparlers* with Switzerland with that end in view. Switzerland, however, feared that her neutrality might be affected adversely by such modification and insisted that this neutrality be expressly recognized by the peace treaty. In the end, she succeeded in having the following wording adopted for Article 435 of the treaty: "The High Contracting Parties, while they recognize the guarantees stipulated by the treaties of 1815, and especially by the act of November 20, 1815, in favor of Switzerland, the said guarantees constituting international obligations for the maintenance of peace, declare nevertheless that the provision of these treaties, conventions, declarations, and other supplementary acts concerning the neutralized zone of Savoy, as laid down in paragraph 1 of Article 92 of the Final Act of the Congress of Vienna and in paragraph 2 of Article 3 of the Treaty of Paris of November 20, 1815, are no longer consistent with present conditions."

How the Federal Council regarded the situation, in view of the paragraph above cited, is shown in a message which it addressed to the Swiss parliament on August 4, 1919, reading in part as follows: "This constitutes, on the one hand, a recognition of Swiss neutrality by the signatories of the peace treaty, a recognition independent of the adherence of Switzerland to the League of Nations, and, on the other hand, an authentic interpretation of Article 21 of the Covenant. Switzerland could, therefore,

without having to make any reservations, enter the League with its neutrality intact on the basis of Article 21 of the Covenant and Article 435 of the Peace Treaty."

There was one more stumbling block. The provisions of the Swiss constitution required that the question of Swiss adherence to the League be submitted to a vote of the people and the cantons. Could adherence which was made contingent on the outcome of a referendum be considered an accession "without reservation," as required by Article 1 of the Covenant?

The Supreme Council held that although the Allied and Associated Powers considered themselves bound by Article 435 of the Versailles Treaty as regarded Swiss neutrality, it was incumbent upon the Council of the League of Nations to voice its views on the status of Switzerland. Accordingly, the Federal Council sent a note to all of the Powers represented on the League Council, requesting that the Council define Switzerland's status as a member of the League.

The outcome was the Declaration of London of February 13, 1920, a resolution of the Council of the League of Nations, in which that body affirmed the incompatibility of the notion of neutrality with the principle of collective action by the members of the League. Nevertheless, it recognized the fact that Switzerland was in a unique position, and that the guarantees in favor of Switzerland in the treaty of 1815, being justified in the interest of general peace, were compatible with the Covenant. The said Declaration of London of the League Council also states that Switzerland is not obliged to participate in any military action by the League, or to permit the passage of foreign troops through her territory. On the other hand, Switzerland accepts the obligation to participate in economic measures undertaken by the League against a state that breaks the Covenant.

In point of fact, this last-mentioned obligation remained essentially theoretical until the outbreak of the Italo-Ethiopian conflict. Then the League for the first time applied economic sanctions against a declared aggressor, and Switzerland found herself among the sanctionist countries. She was faced with the necessity of taking up a hostile position vis-a-vis a country, Italy, with which she had friendly relations. Especially affected was one part of Switzerland, the Tessin, which is Italian-speaking and whose economic life is most closely bound up with that of Italy. It was a matter of regret to the Swiss government that the jurists should have established a distinction between neutrality from a military viewpoint and neutrality from an economic viewpoint. Although at the beginning of the conflict it seemed improbable that economic sanctions would lead to military sanctions—that is, war—it was quite conceivable that they might do so. Hence Switzerland was confronted with the dilemma that if

she agreed to one kind of sanction she might conceivably be drawn into the other kind. The experiment appears to have passed without grave inconvenience, but there is still the danger of a precedent having been set.

It may be said, therefore, that under the stress of actuality Switzerland has somewhat modified her position, now taking the stand that she is not obliged to participate in action, economic or otherwise, which may lead to armed conflict or which may be interpreted by the aggressor as a *casus belli*. The difficult situation in which she found herself over the Italo-Ethiopian war is well summed up by Alphonse Morel in the *Nation* of Lausanne, when he points out that the state of war today cannot be limited to military operations. Military neutrality, he says, is a conception which belongs to an epoch in which war was strictly military. But modern war may extend to all lands. To distinguish between situations in which one should be neutral and situations in which one should not be neutral is the negation of neutrality. A state cannot be partially neutral. If its neutrality is broken down at all, it is broken down completely.

WALTER R. ZAHLER.

Chicago, Ill.

NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The thirty-second annual meeting of the American Political Science Association will be held at Chicago on Monday, Tuesday, and Wednesday, December 28–30. The committee on program, of which Professor Cullen B. Gosnell, of Emory University, is chairman, was announced in the April issue of the REVIEW, and the committee on local arrangements consists of Professors Harold F. Gosnell, University of Chicago, chairman; George Benson, American Legislators' Association; William B. Ballis, University of Chicago; Earl De Long, Northwestern University; Charles P. O'Donnell, De Paul University; and Aloys P. Hodapp, Loyola University. Monday forenoon, December 28, will be left open for registration and renewal of acquaintance. The opening event will be a luncheon on that day presided over by Professor Frank G. Bates, first vice-president, and addressed by Professor Charles E. Merriam on "Recent Progress in Planning in the United States." Section meetings that afternoon, with their chairman, will be: (1) "The Pros and Cons of Judicial Review," Charles G. Haines; (2) "The Good Neighbor Policy," J. Fred Rippy; and (3) "Administration of New Governmental Activities," Charles McKinley. The topic for the evening session will be "The University and Public Affairs," and the speakers will be Otis T. Wingo, on "Training for the Public Service," and Thomas H. Reed, on "Adult Political Education." Round-table meetings on Tuesday and Wednesday forenoons will be: (1) "University Courses of Training for the Public Service," William B. Munro; (2) "The Press and Public Affairs," George Fort Milton; (3) "Reorganization of County Government," Earl L. Shoup; (4) "Revision of the Status Quo," Brooks Emeny; (5) "Political Parties," Thomas S. Barclay; (6) "Federal-State Relations," John Sly; (7) "The Nature of Political Liberty," Francis W. Coker; (8) "Regionalism in Governmental Planning and Administration," John M. Gaus; (9) "Recent Developments in State Government," Frank M. Stewart; (10) "After the Neutrality Legislation—What?," Quincy Wright; (11) "The Supreme Court; An Analysis of Personnel," Irby Hudson; (12) "The Pros and Cons of Judicial Review," Charles G. Haines; (13) "Dictatorship and Constitutionalism in European Countries," Roger H. Wells. At a luncheon on Tuesday, Justin Miller will speak on "Governmental Organization and Crime Control"; and at another on Wednesday (held jointly with the American Association for Labor Legislation), Lloyd K. Garrison and Donald Richberg on "Social Welfare and the Constitution." The annual business meeting will be held on Tuesday afternoon, and in the evening the presidential address will be delivered at a session held jointly with

the American Economic Association and the American Statistical Association.

Professor Thomas H. Reed has resigned his professorship at the University of Michigan in order to continue his work as head of the Municipal Consultant Service of the National Municipal League.

Assistant Professor Frederick L. Schuman, of the University of Chicago, has been granted a one-year leave of absence and has accepted a one-year appointment as visiting lecturer in international relations at Williams College.

Professor Quincy Wright, of the University of Chicago, will exchange with Professor Pitman B. Potter, of the Graduate Institute of International Studies, Geneva, Switzerland, during the spring and summer of 1937.

Professor Clyde Eagleton, of New York University, will teach at Stanford University during the autumn and winter quarters of 1936–37.

Professor Graham H. Stuart has been granted sabbatical leave at Stanford University. He has been on duty during the summer quarter at the University of Minnesota, and will spend the remaining time in Europe and the Near East.

Professor Edwin A. Cottrell, of Stanford University, gave courses on public administration at the University of California, Berkeley, during the summer session. He was recently made a member of the interim tax commission of the state of California.

Professor John A. Fairlie, of the University of Illinois, sailed for Europe in May and will remain abroad until the middle of the coming academic year.

Professor Marshall E. Dimock, of the University of Chicago, is giving a series of lectures on the changing relationship between government and business at the Colorado Springs Public Forum, August 16 to September 30.

At the University of Michigan, Drs. Howard B. Calderwood and Harlow J. Heneman have been promoted from instructor to assistant professor of political science.

Professor Henry R. Spencer, of Ohio State University, gave courses at the University of West Virginia during the recent summer session.

Professor Harold M. Vinacke, of the University of Cincinnati, taught at Ohio University during the recent summer session.

At the University of Pennsylvania, Drs. Edward B. Logan and Charles C. Rohlfing have been promoted from assistant to associate professor and Dr. John P. Horlacker from instructor to assistant professor.

At the University of Illinois, Drs. Valentine Jobst, III, and Clyde F. Snyder, graduate assistants in 1935–36, have been appointed to instructorships.

Mr. Robert W. Rafuse, who is completing his work for a doctor's degree at the University of Illinois, has accepted an instructorship in political science at Williams College.

Dr. Pressly S. Sikes, recently promoted to an assistant professorship at Indiana University, taught at Mississippi State College during the summer session.

Professor Harold S. Quigley, of the University of Minnesota, taught during the first term of the summer session at the University of Southern California.

At Indiana University, Professor Ford P. Hall has been promoted to a full professorship and made head of the department of government, and Dr. Pressly S. Sikes has been made an assistant professor and director of the bureau of government research.

Professor Norman J. Padelford, of Colgate University, has been appointed professor of international law in the Fletcher School at Tufts College. He will teach the courses formerly given by Professor George Grafton Wilson and will be chairman of the division of international law and organization.

Mr. August O. Spain, of Colgate University, has been appointed assistant professor of political science at Hendrix College. He will have charge of the work in political science and of a social science survey.

Dr. John J. McDonald, attorney and a former editor of the *Yale Law Review*, gave a course on international law, and Dr. E. Wilder Spaulding, of the U. S. State Department, a course on American government, in the summer session of the George Washington University.

Mr. Russell W. Barthell, executive secretary of the bureau of government research at the University of Washington, has been granted leave of absence for the coming year to continue graduate study at the University of Chicago. Mr. Chester A. Bieson has been appointed acting executive secretary of the bureau.

Governor H. Styles Bridges, of New Hampshire, has created a liquor survey commission to make a study of the operation of the state liquor control system. The commission is to serve as a fact-finding agency and report by the opening of the next session of the legislature. The members are Mr. O. V. Henderson, registrar of the University of New Hampshire,

Professor Harold R. Bruce, of Dartmouth College, and Judge John Scammon, recently retired from the superior court.

Dr. Ben M. Cherrington, professor of international relations at the University of Denver, went abroad in June to assist in the direction of an American seminar held in London during the summer. He is spending the remainder of his time studying political trends in Europe.

Mr. Wilbert Hindman, formerly teaching fellow at the University of Michigan, has been appointed instructor in political science at Colgate University.

Dr. George C. S. Benson has been appointed associate professor of public administration at the University of Michigan. During the past two years Dr. Benson has been chief research consultant of the Council of State Governments, managing editor of *State Government*, and lecturer in political science at the University of Chicago.

Plans for the development at the University of Virginia of a center for graduate study and research in political science for the entire South were announced by President John L. Newcomb in connection with the commencement exercises on June 9. Simultaneously, announcement was made of the appointment of Professor James Hart, of the Johns Hopkins University, to a professorship at Virginia.

Among participants in a conference on current international problems held at the University of Minnesota on July 9–10 were Professors C. F. Remer, of the University of Michigan, Graham H. Stuart, of Stanford University, John Madden, of New York University, Eugene Staley, of the University of Chicago, and Mr. Warren S. Thompson, director of the Scripps Foundation, Miami University.

The twelfth institute under the Norman Wait Harris Memorial Foundation was held at the University of Chicago from June 23 to July 3, on the subject of "Neutrality and Collective Security." The public lecturers included Sir Alfred Zimmern, of Oxford University; Ambassador William E. Dodd, professor emeritus of history at the University of Chicago; Charles Warren, formerly assistant attorney-general of the United States; and Dean Edwin DeWitt Dickinson, of the University of California School of Jurisprudence. As usual, round tables of experts were organized for detailed discussion. Several officials of the Department of State participated.

Fifteen men, including six members of police departments and five traffic experts from various parts of the United States and from England, have won fellowships of $1,200 each for study during the next academic year at Harvard University's bureau for street traffic research. These men will join with other students and staff members at the bureau in a scientific attack on all phases of automobile accident and traffic problems.

In connection with the active program for the development of an outstanding center of graduate studies in Washington, especially in the social sciences, the American University has received a bequest for the construction of a Hall of Nations building, and with the assistance of an advisory committee headed by ex-Secretary Henry L. Stimson, is evolving a plan for (1) rooms or alcoves in a central library devoted to the political and economic literature of each participating country, (2) a series of scholarships for exchange students, and (3) visiting professorships to be held in rotation by distinguished scholars from the United States and abroad. The diplomatic representatives of a number of foreign states have accepted honorary chairmanships of coöperating committees representing the respective states.

Under the auspices of the Graduate School and the School of Public Affairs, the American University will launch this fall a special sequence of courses in social security administration, centering upon three alternative activities: (1) unemployment compensation, (2) public assistance, and (3) public welfare administration. Interneships form part of the plan, and students—of whom not more than twenty-five will be accepted for the first year—may become candidates for master's and doctor's degrees. Persons, apart from the regular staff of the University, who will offer courses include Drs. Ewan Clague, Joseph P. Harris, Walton H. Hamilton, Henry Reining, William E. Leiserson, and J. F. Dewhurst.

The University of Minnesota announced in May a new program of training for public administration in which provision will be made through fellowships for a group of men in public service who wish to go to the University for a year of advanced study of administration, and also for a group of persons holding the bachelor's degree but without public service experience. The fellowships for the latter group will normally run for two years, one of which will be devoted to an interneship in some governmental employment, national, state or local. Individual courses of study will be planned for each student, depending upon previous preparation, personal interests, and the requirements of public service. All fellows will be required to enroll in the graduate seminar in public administration, which will demand from one-third to one-half of their time during the first year of study. A written report on some special subject will also be required of all fellows at the close of the interneship.

Dr. Arnold B. Hall, director of the Institute for Government Research at the Brookings Institution, died in Washington after a lingering illness, on June 1, at the age of fifty-five. Born in Franklin, Indiana, he was educated at Franklin College and the University of Chicago, receiving a J. D. degree from the latter institution in 1907. After serving as an in-

structor in political science at Northwestern University in 1909, he went to the University of Wisconsin, where he remained, eventually as professor of political science and associate professor of law, until his election to the presidency of the University of Oregon in 1926. Remaining in this post six years, he became identified with the Brookings Institution in 1933. While at Wisconsin, he organized and directed a National Conference on the Science of Politics which held a number of summer meetings, and also assisted in the formation of the Social Science Research Council, serving for some years in that body as a representative of the American Political Science Association and also as the first chairman of the Council's committee on problems and policy. His publications included *The Monroe Doctrine*, *Dynamic Americanism*, and *Popular Government*. At the time of his death he was engaged on a treatise on educational administration in the United States. His major interests were the promotion of scientific methodology in political science, the closer articulation of the social sciences, and the encouragement of intelligent social action; and to all of these objectives he made substantial contribution.

In February, the U. S. Senate passed a resolution creating a special committee to study all of the activities of the departments and agencies of the executive branch of the national government with a view to reorganization in the interest of simplification, efficiency, and economy. Senator Harry F. Byrd of Virginia was named chairman. Other members of the committee are Senators Robinson, McNary, O'Mahoney, and Townsend. On March 22, President Roosevelt sent to the Speaker and to the Vice-President identical letters announcing the appointment of a presidential committee to study the organization of the executive branch of the government, with particular attention to the new agencies and to problems of administrative management. On this committee were appointed Mr. Louis Brownlow, chairman, Professor Charles E. Merriam, of the University of Chicago, and Dr. Luther Gulick, executive director of the Institute of Public Administration. The Senate committee appointed an advisory committee consisting of Louis Brownlow, chairman, President Harold W. Dodds, of Princeton University, Luther Gulick, ex-Governor William Tudor Gardiner of Maine, and Professor John D. Clark, of the University of Nebraska. The President's letter requested the House of Representatives to create a corresponding committee, which was done, and to this committee were appointed Messrs. Buchanan of Texas, Cochran of Missouri, Wadsworth of New York, Lehlbach of New Jersey, and Brown of Michigan. It is expected that the three committees will work in close coöperation. Under the immediate supervision of Dr. Joseph P. Harris, the President's Committee on Administrative Management is studying problems relating to the management of the executive branch of the government; while the congressional committees are deal-

ing with problems relating primarily to overlapping, duplication, and reorganization. The latter two committees have jointly engaged the Brookings Institution to carry on an investigation of the activities of the executive agencies, and Mr. Fred Powell, acting director of the Institute for Government Research, is in charge of the study.

Prompted by the approaching sesquicentennial of the framing and ratification of the Constitution of the United States, the National Historical Publications Commission has made a comprehensive survey of original material, published and unpublished, relating to the Constitution's antecedents, its ratification, and the proposal and ratification of the twenty-one amendments, and has arrived at a recommendation which deserves the active support of all persons interested in American constitutional history and law. Only limited portions of the original material on the ratification of the Constitution and the first ten amendments, the Commission finds, have been collected and so edited and published as to serve the purposes of scholars or general readers. "The articles by Madison, Hamilton, and Jay known as *The Federalist*," it says, "are available in many editions, some of which are well edited; and some of the other newspaper essays and pamphlets have been assembled and reprinted in limited editions now out of print. Some of the debates in the state conventions were published in 1827 in a work known as *Elliot's Debates*, but the editing was crudely done and the texts are unreliable. The second edition of this work (1836) was somewhat enlarged, but there was no improvement in the editing, and additional records of debates have since come to light . . . The Commission believes that a thorough search of contemporary newspapers, magazines, and pamphlets, of published and unpublished state archives, and of published and unpublished correspondence of the period would disclose a large amount of material that would shed new light on the ratification of the Constitution. The assembling and publication of this material, together with the pertinent material in *Elliot's Debates*, all taken from the original sources and edited in accordance with the canons of modern historical scholarship, would be a valuable service to scholars, lawyers, teachers, and the public generally, and would promote a more adequate comprehension of the significance of the Constitution on the part of the American people." Accordingly, the Commission has formulated a project for the preparation and publication of a six-volume collection planned to include all useful materials pertinent to the ratification of the Constitution and the first ten amendments, except that *The Federalist*, already conveniently available in well-edited form, would be included only by title. The time required is estimated at three years and the cost at $85,000; and supporters of the enterprise are invited to use their influence in behalf of the necessary congressional appropriation.

Several Southern members of the American Political Science Association are participating in a political opinion-forming venture. "Dixie Liberals" was a press label for the second Southern Policy Conference, which was held at Lookout Mountain Hotel near Chattanooga, May 8–10, with fifty Southerners and six Northern visitors present. Among the participants were professors, editors, business men, lawyers, labor leaders, party officials, men and women with governmental connection, and one clergyman. Members were present from twelve Southern states, some representing state or local "policy" groups. President Frank P. Graham, of the University of North Carolina, presided over the opening session. "Social Security for the South—Urban and Rural"—the general subject of the meeting—was considered broadly and informally. Sub-committees made reports on the agricultural, industrial, and constitutional phases of the topic, while another section reported on the relationship of democratic institutions to social security. The global report as finally accepted embraced a wide range of points, such as the condemnation of lynching, recommendation of equal pay for equal work regardless of sex or race, comparable educational facilities for Negroes, removal of poll-tax qualifications for voting, land reform, state constitutional reform, and a direct popular amending process for the federal Constitution. Dissenting and supplementary statements were made part of the proceedings. It was decided that questions of land policy and tenure must be of paramount immediate concern in dealing with the problems of poverty and democracy in the South. The conference was planned by a Southern Policy Committee, with H. Clarence Nixon, of Tulane University, as chairman, Brooks Hays, of Little Rock, as vice-chairman, and Francis P. Miller, of Fairfax, Virginia, as secretary. The committee was formed originally at the first Southern Policy Conference, held in Atlanta in April, 1935, with suggestions and encouragement from representatives of the Foreign Policy Association, which had circularized the members in advance with documentary material of importance to Southerners. Mr. R. L. Buell, of the Foreign Policy Association, visited both the Atlanta and the Chattanooga conferences, but Southern Policy has no official connection with Foreign Policy. Through the coöperation of the University of North Carolina Press, the Southern committee published, prior to the Chattanooga conference, a pamphlet series of *Southern Policy Papers*, consisting of the following numbers: (1) "Southern Population and Social Planning," by T. J. Woofter; (2) "Social Security for Southern Farmers," by H. C. Nixon; (3) "Social Legislation in the South," by Charles W. Pipkin; (4) "How the Other Half is Housed," by Rupert B. Vance; (5) "Industrial Social Security in the South," by Robin Hood; (6) "The Southern Press Considers the Constitution," edited by Francis P. Miller; and (7) "The TVA and Economic Security in the South," by T. Levron Howard.—H. C. Nixon.

BOOK REVIEWS AND NOTICES

Government by Merit. By LUCIUS WILMERDING, JR. (New York: McGraw-Hill Book Company, Inc. 1935. Pp. vii, 294.)

Minutes of Evidence. Taken before the Commission of Inquiry on Public Service Personnel. (New York: McGraw-Hill Book Company, Inc. 1935. Pp. xiii, 721.)

Mr. Wilmerding's book is the last in a series of twelve monographs prepared for the Commission of Inquiry on Public Service Personnel for the purpose of reporting and interpreting personnel practices in government service both here and abroad. The author served on the Commission's staff as assistant to Dr. Luther Gulick, the director of research. His volume differs from the other monographs in that it was prepared after the others had been completed and the hearings of the Commission held. Thus in part it is a summary of the expert evidence and the lay testimony presented to the Commission. But more than this, the writer offers a positive program of action for the solution of public personnel problems. He is concerned primarily with personnel in the national government, but he devotes a very brief closing chapter to state and local problems. His method of presentation is that used for the submission of expert testimony to parliamentary commissions of inquiry.

In his discussion of and recommendations concerning the problems of classification, recruitment, and promotion, the author places major emphasis upon the administrative class of public servants—an emphasis which is apparent also in the report of the Commission. He proposes that five distinct divisions be set up in the present clerical, administrative, and fiscal service of the national government, namely, administrative, executive, clerical, office assistant, and stenographic divisions, and that new employees be recruited to the lowest grade in each of these divisions. Recruitment to the administrative division should be exclusively at the college level, although promotion to this division as an extraordinary procedure is admitted as proper.

The writer severely criticizes the traditional American procedure for the classification of positions. He urges the abandonment of classification systems built upon answers to questionnaires in favor of a classification based upon generally recognized careers in public service, divided to the extent required for purposes of recruitment and promotion. Typical of his many definite conclusions and recommendations concerning other personnel practices are: "Granted impartiality, I have no doubt of the superiority of selection boards to written examinations as the discoverers of merit" (p. 119); "One must challenge the very validity of the underlying assumption of efficient ratings, namely, that a man's efficiency can

be represented numerically" (p. 172); "I do not recommend a procedure of central appeals" (p. 226); "It seems to me perfectly clear strikes cannot be permitted in the government service" (p. 244); "To civil service commissions, I would leave only the function of examination" (p. 273).

The positive assurance with which the author challenges current practices and submits recommendations will perhaps amuse those who have had long experience in the immediate tasks of public personnel management, but few who read will deny that in his effort to follow a style "pregnant and pointed rather than hortatory and pious, for it is the mind, not the heart, which needs convincing," Mr. Wilmerding has, in an interesting manner, given both students and practitioners in this field something to think about.

The Commission of Inquiry on Public Service Personnel, as one method of carrying on its investigations, conducted hearings during the spring and fall of 1934 in eleven cities of the United States at which a considerable number of persons representing the different sections of the country presented evidence as to existing public personnel practices and offered suggestions for improvement. Among the approximately 170 persons who testified at these hearings upon invitation of the Commission were 49 members of civil service commissions and public personnel officers; 40 governors, mayors, department heads, and other government officials; 5 state and municipal legislators; 8 representatives of government employee organizations and labor groups; 6 executives of professional associations of public servants; 26 university executives and teachers; 13 staff members of governmental research bureaus; 9 business executives and personnel officers; 1 editor; and 13 representatives of men's and women's civic organizations. Both open and closed hearings were held. For purposes of publication, the actual verbatim report of the proceedings was reduced by more than half. With the permission of witnesses, some testimony presented in closed sessions has been included in the printed report.

The testimony covered virtually the entire range of public personnel problems. Some witnesses offered prepared statements, while information and suggestions from others was secured through questions asked by members of the Commission. Support for the merit system was practically unanimous, but more because of what that system makes possible than because of what it has been where adopted in the United States.

Among the subjects frequently discussed was that of recruitment and training for the administrative positions in government service. The special interest of the Commission in this subject is reflected in the questions asked of witnesses. While opinion seemed to favor definite recognition of "administration" as a distinct field of public service and recruitment to that service of college and university graduates, doubt was

expressed concerning the wisdom of adopting the British practice of limiting recruitment for administrative positions to such graduates. Opinion was divided as to the feasibility of specific pre-entry university training for public administration, and the suggestion of several that line departments might properly be headed by administrators without basic training in the functions performed by such departments was characterized by ex-President Herbert Hoover as "an illusion."

The usefulness of this splendid document is greatly enhanced by both an index of witnesses and a copious general index with statements and recommendations listed under both subject-matter headings and units of government.

LLOYD M. SHORT.

University of Minnesota.

Judicial Review of Federal Executive Action. By PATRICK H. LOUGHRAN. (Charlottesville, Va.: The Michie Company. 1935. Pp. xvi, 813.)

While a sub-title describes this work as "a compilation of cases that exhibit the extent of the power in the federal judiciary to review the acts of executive officers, boards, bureaus, and commissions of the United States in proceedings for injunction and mandamus under the law in the District of Columbia, and in proceedings for those remedies under the general jurisdictional acts, in the district courts of the United States in the states, that have not been superseded by special statutory remedies," the book really comprehends more than all of this. In good measure, it is a treatise on the substantive and adjective law involved in such processes, including the common law, admiralty, and maritime law. Likewise, the treatment extends to such national fields as pensions, taxation, public lands, navigable waters, civil service, and the Federal Trade Commission.

The author avowedly writes with a purpose and with a subjectivity that has accelerated throughout nearly a quarter-century of practice in federal administrative law. He is frankly dissatisfied with, not to say alarmed at, "executive justice" and the paucity of congressional provision for the judicial review of it. Like many predecessors on kindred themes, he feels that public interest is jeopardized and private right menaced by the executive department's power in adjudicating personal affairs and property matters.

Due to congressional negligence, the executive department is particularly guilty of six familiar kinds of injustice: sham exercise of discretion and judgment; disregard of laws by "policy-creating" officers; ultra-vires acts; improper constructions of the law; refusals to find according to evidence; and instability of decisions—any one or all of which may result from party domination of executive action. In tune with this argument is the chapter on "The Narrowness of the Jurisdiction of the Proc-

esses and their Consequent Inutility as Means of Complete Protection of Private Right by the Judicial Power."

In presenting these views, Mr. Loughran, like Professors W. F. Willoughby and L. M. Short, makes a clear distinction between executive action and administrative action, and thereby concentrates much of his attention upon the expanding power of the President as it existed prior to the New Deal. In the executive department, every function of government, he contends, "is related either to an exercise of the discretion of the President under the Constitution or to an exercise of the discretion of Congress thereunder. Whether related to the one or to the other, the function is necessarily an executive function, i.e., a function of effectuation of the will of the President as expressed in an exercise of the power of executive discretion vested in him, or of the will of Congress as expressed in an exercise of the power of legislative discretion vested in it"; while "administrative action" is a term "applied to action under the authority of Congress to distinguish such action from action under the authority of the President; and it is to the former action that the body of law known as federal administrative law relates."

In treating this body of administrative law, additional evidence is afforded of its growth in America since Professor A. V. Dicey suggested that there was in America no administrative law in the Continental sense. This revelation is significant even though restrained from the wilderness of administrative actions, rules, and regulations that have sprung from the two million American statutes and ordinances of national, state, and municipal origin.

Herein the work renders a service to law-fearing thinkers that is more timely in 1936 than it was when produced in 1930. For despite its subjectivity, it is with objectivity that its theme may be applied to executive action resulting from the New Deal. Scarcely any principle involved in New Deal legislation is condemned as such. But the data suggest the conclusion that unless the courts are required to exercise more control over executive action, the New Deal will become a menace to private persons, corporations, and business in general, and will constitute a stimulant to lawlessness. The menace of the ever-enlarging field of executive justice to business and to the public interest in 1930 is presented as being "in the degree in which executive action is exempt from judicial review." Moreover, judicial "review on law alone is inadequate. It should extend to review on the law of proof of facts; and the judiciary should be endowed with the power of discretion to review even to the extent of examining the evidence and determining its weight." A stimulant to lawlessness prior to 1930 was the circumstance that Congress had made immediately available to the people no relief against most executive action at Washington other than the injunction and the mandamus. These processes

were of such narrow jurisdiction as to force the courts to refuse them, even at times when executive action was in conflict with law. This situation had "frequently disgraced the executive department, discredited the federal government, and bred in some of the people the lawless spirit." Hence the lawlessness of the people was "produced by examples of lawlessness in the executive department of the government of the United States."

All told, the thousand pages of this volume contain a rich supply of classified cases and analyses of legal data that should be valuable to students and to lawyers.

MILTON CONOVER.

Yale University.

American Diplomatic and Consular Practice. By GRAHAM H. STUART. (New York: D. Appleton-Century Company. 1936. Pp. xi, 560.)

The purpose of this book, according to the author, is "to present an adequate survey of the organization and workings of the machinery employed in conducting the foreign relations of the United States." As a "survey," it is a most valuable and useful study, and in the opinion of the reviewer nothing better on the organization and activities of our diplomatic and consular services has been published. It bears the earmarks of extensive research, wide reading, personal observation in the field, and much conversation with foreign office officials at Washington and abroad. The study deals, in turn, with the ancient origin of the diplomatic and consular services in Europe, the control of the foreign relations of the United States, the organization and work of the Department of State, the growth and development of the American foreign service (including an analysis of recent reforms), the appointment, reception, duties, and immunities of diplomatic and consular representatives, and the varied functions and activities of the foreign service. The author's discussion of the nature and variety of the services which diplomatic and consular representatives perform for American citizens is especially good, containing, as it does, numerous illustrations drawn from actual practice.

In a final chapter entitled "Observations and Suggestions," the author explains why the diplomatic branch of the government has always been regarded with a certain popular distrust—quite without solid justification, as he points out. He criticizes, quite justly, Congress for the inadequate support which it gives a branch of the government that renders so many useful and essential services to the nation and emphasizes the need for more liberal salaries and allowances for foreign service officials and for more government-owned buildings in which to house our diplomatic and consular services abroad.

The book contains several useful appendices: a list of the presidents and secretaries of state from 1789 to the present time, with the dates of their service; the names of all American diplomatic representatives accredited to the various countries of the world from 1790 to the present day, with the dates of their service; the text of the Moses-Linthicum Act of February 23, 1931; the texts of a typical letter of credence and a consular commission; and a select list of books relating to the diplomatic and consular practice.

Teachers, students, and all persons interested in the foreign service of the United States will be indebted to Professor Stuart for this excellent and useful contribution to the literature of the subject with which it deals.

JAMES W. GARNER.

University of Illinois.

The Jeffersonian Tradition in American Democracy. By CHARLES M. WILTSIE. (Chapel Hill: University of North Carolina Press. 1935. Pp. xii, 273.)

Although the title of this book would give the impression that it deals with the influence of Jefferson upon subsequent political movements and thinkers, the bulk of it is devoted to an analysis of Jefferson's ideas. This part is preceded by three chapters on antecedents in Europe and in America. The third of these is a very useful survey of Jefferson's sources. The first two are very sketchy, and, for most readers, probably not very helpful, notes on the trend of political theory in the sixteenth, seventeenth, and eighteenth centuries. On the other hand, the analysis of Jefferson's thought is adequate in scope and carefully done. Most at least of the material here discussed will seem familiar to those who have read many of Jefferson's state papers and letters, but in no other book can one find so thorough and so systematic a discussion of this material. The thoroughness is entirely commendable. There is more room to doubt the value of the systematization. Virtually everything that Jefferson wrote on politics had relation to a particular set of conditions. He was not a systematic philosopher, and the attempt to reduce his vast number of occasional writings to systematic treatment, although it may appear to produce a clearer picture of Jefferson's thought, not infrequently results in an artificial, if not a barren, orderliness.

But it seems to me that the chief shortcoming of this method of treatment is its lack of emphasis upon the extent to which Jefferson was an inveterate reformer. Almost all of the major achievements of his career and most of his political writings are in some fashion linked up with reforms—reform of the British Empire, of the landholding system in Vir-

ginia, of that state's constitution, of the relation of church and state, of the school system, of the criminal code, even of agriculture and architecture. His famous letter to Kercheval in 1816 only makes explicit what is clear without it, that he saw no reason why the provisions of a constitution adopted by one generation should stand in the way of reforms desired by another. I do not mean to imply that this aspect of Jefferson's thought is absent from Mr. Wiltsie's study; I do mean that it is not sufficiently discussed.

Much the same criticism is, I think, justified in connection with the last section of the book—the part dealing with the place of the Jeffersonian tradition in the development of American democracy. The author's comments are, almost without exception, excellent. He sees clearly the absurdity of defending, by appeal to Jefferson's name, attitudes which Jefferson might have favored a century and a half ago but which he certainly would not support today. The discussion is, however, so brief that there is little opportunity to do justice to the subject. After all, two pages on the relation of Jackson and Lincoln to the Jeffersonian tradition can hardly get us very far. Similarly, the influence of Jeffersonianism upon the various progressive movements of the last half-century cannot be dealt with in ten pages. Indeed, this last portion of the book is rather a very good preliminary survey, than a full treatment, of what is surely one of the finest subjects in the field of American political thought.

BENJAMIN F. WRIGHT, JR.

Harvard University.

Stormy Years. BY CARTER H. HARRISON. (Indianapolis: The Bobbs-Merrill Company. 1935. Pp. xv, 351.)

This is the autobiography of "Carter Harrison the Younger," five times mayor of Chicago between 1897 and 1913, and son of a man who was also mayor for five terms in the '80s and early '90s. The autobiographer was first elected mayor as the son of his father, being himself, so his political opponents said, "just the shadow of a name." But in time he became a figure of almost national importance in his own right.

"While I do not believe it possible in a university classroom or laboratory to educate mayors, aldermen, precinct captains, ward-heelers, nor any of the other apparently essential parts of the municipal political machine, I believe some benefit may be gleaned from knowledge of the practical experiences of a somewhat successful participant in the exciting game," he says (p. 292), "and this has led me to a rather unusual amount of frankness in detailing my life." Considering ex-Mayor Harrison's vast experience, one would expect to find this book, written from such a point of view, of great value, even to the students whose efforts in the classrooms he seems to deprecate. If it is not of great value, the failure is due

either to the author's inability to remember, at seventy-five, exactly what happened, or to his still more remarkable inability to forget old hates. This latter inability is indeed so remarkable, in a politician, who is assumed to forgive and forget, that one wonders if ex-Mayor Harrison has not transcribed old notes without reorganizing them in perspective. It is certainly unusual for old bitternesses to ferment into such bile.

Consider, for example, his remarks on Altgeld. Altgeld, he declares in a final summary, had "a mighty intellect; he was in most respects a great soul." That is Harrison's lip-service. But the details? Altgeld was "a radical who without his wealth would probably have been carried by his leanings into the outright anarchistic group." This is nonsense. "I would ascribe to him the willingness to accept any backing and support of any political or economic unit that would help to place in his hands the power to establish the business and governmental theories in which he believed." In other words, this "mighty intellect, this great soul," was a demagogue of demagogues. Harrison explains that the "charitable view" would be that "locomotor ataxia, the disease from which Altgeld suffered, poisoned his mind at times." He alleges that there is a "basis of suspicion" that Altgeld opposed Harrison in 1898 to serve Yerkes in the effort to break down the Harrisonian opposition to Yerkes' fifty-year traction-extension ordinances. He recounts in detail his own assertions, made in the campaign of 1900, that Altgeld had accepted money from Yerkes the year before—assertions based on rumors long known to have been baseless fabrications of Altgeld's enemies. He recites other rumors that Altgeld had borrowed money for his own personal use from a state treasurer who was subsequently branded as a defaulter and who committed suicide. He repeats, apparently with pride, his characterization of Altgeld in the same campaign as "the Upas-tree of politics; merely to rest in its shade is reputed to bring death." Is it not inconceivable that a man of seventy-five should repeat the hoary "campaign lies" of thirty-five years earlier? Either he has kept the memory of Altgeld preserved all these years in the alcohol of hate; or else he has simply not taken the trouble to revise his notes, made at the time, in the light of later knowledge.

In the same way, he still seems to hate Charles E. Merriam, and even Secretary Ickes, under whom, as collector of internal revenue, Harrison serves at the moment. Although a quarter of a century has elapsed since Merriam ran against Harrison for mayor, with Ickes as campaign manager, he dribbles his venom over both. He "will not charge Ickes with moral obliquity." To be sure, Ickes was "none too scrupulous in methods, but perhaps as a matter of charity we should give [him] the benefit of the doubt"; although Merriam indulged "in personalities and veiled charges really unworthy of a candidate." Again, as in Altgeld's case,

Harrison recites his own old campaign lies: how Merriam's wife, though born a Catholic, was really a regular attendant at a Baptist church; how Merriam's children had been allowed to remain unbaptized; how—it sounds incredible, but see p. 275—Harrison himself engaged the president of the Catholic Woman's League to spread these lies. "At every Catholic parish in the city, priests, sisters, as well as parishioners, were advised. . . . That settled it. The Irish vote was mine to a standstill." No man could rake over stale political filth of this sort except from pure personal enjoyment of the smell. It is interesting to compare with this Professor Merriam's own brief account of that campaign, and his own academic estimate of Harrison, in *Chicago* (pp. 191–2, 281–7).

And yet, though in various details Mr. Harrison's memory betrays him into odd mistatements of fact, and more frequently either direct quotation of old notations or his own self-esteem betrays him into apparent bile, this autobiography should be of a certain value to students of American municipal politics. For it is a genuine record of political devices, of the ways in which politicians got—and still get—the one thing they want—votes. Into the details of ballot-manipulation Mr. Harrison, unfortunately, does not go. He knows them; he refers pleasantly to occasions on which the efforts of Hinky-Dink Kenna and Bathhouse John Coughlin, aldermen of the first ward, and his oldest and closest aldermanic associates, won elections for him. But he does not discuss them. Of the principles of *vote-getting*, however, his autobiography is a real compendium. Moreover, his characterizations are interesting. He whitewashes himself very thoroughly, but he whitewashes none of his associates. He does not give his tongue the protection of his cheek when he says of himself that "too unsuspicious, too lacking in self-assertion, something of a visionary, though of a type whose mind when once made up it was all but impossible to change," he had only "one wish—to serve the people to the full extent of his ability." But when he recalls his citation of "Hinky-Dink and Bathhouse John as standing firm, steadfast for the people's protection," he adds that ever afterwards "in private, they were known as the Two Rocks."

And so in his autobiography he may be said to have "served the people," after a fashion, to the end. Like his more dramatic, more energetic, more picturesque, but no more practical father, he was an example of the "university man" in politics, in an earlier era. Even though he seems to think little of classrooms, and to regard "professor" as a term of scorn, he was himself a man of good education and of good manners. If his autobiography reveals that education and good manners are not enough, it shows also that, in their way, they are something.

JAMES WEBER LINN.

University of Chicago.

Borah of Idaho. By Claudius O. Johnson. (New York: Longmans, Green and Company. 1936. Pp. xi, 511.)

It is a task for a biographer to present in sound perspective the life of a living personage, but it can be done successfully; witness William E. Dodd's able life of Woodrow Wilson, which affords a better basis for understanding the depths of the Wilsonian personality than anything written before or after. Although Dr. Johnson's biography of William E. Borah came from the press in the heat of the Senator's campaign for the Republican presidential nomination, and so will be assumed to be the usual rose-colored campaign biography, it is not such in fact, but should have a life long beyond this year's Republican national convention.

The author, a professional political scientist, happens to enjoy unravelling the tangled threads in the skein of contemporary politics. He showed this in his book on Carter H. Harrison, and his experience is valuable in the present work. One result of his research was to make him a warm admirer of the man who made Idaho famous. His admiration for his central character, however, does not lead the biographer to ignore the necessities of a careful presentation of the facts and their meaning.

The book is not without its structural deficiencies. At times, the reader feels that the topical treatment has led to a kaleidoscopic chronological disarrangement. Again, purely superficial explanations of Senator Borah's attitudes are accepted at face value. But these things do not subtract importantly from the merit of the volume. To understand the mainsprings of politics of the decade, students of America's 1920's must pay attention to this biography.

William Edgar Borah is the sort of person whom the great Russian novelists would have termed "an original." Some American contemporaries have called him "the lone wolf," and "a man who could coöperate with nobody, including himself." To his biographer, this has not meant that Borah is a philosophical anarchist. On the contrary, upon the arising of any issue, the Senator has searched his soul, secured a firm view of the issue, and thenceforward has insisted on treating it from that standpoint, regardless of what might be the attitude of Senate, party leaders, or White House.

This is largely the explanation of an undoubted truth: Senator Borah has been a most irregular Republican and very little of a party man. But upon one inner fact there is little occasion to debate: Borah is a man of utter self-sincerity. Many of his policies do not mesh with one another; on one point he would be an ardent champion of state's rights; on another, he would fly in the face of the Virginia-Kentucky Resolutions of 1798. But the mind of man is seldom completely logical or consistent, and intellectual discrepancies of this type are more proof than disproof of sincerity.

Senator Borah's mind definitely reflects the immediate *locale* of his childhood. A legal mind, it is impressed with the liberalism of the 70's and the 80's, and rather heedless of the economic rearrangements which the last half-century has brought to America. Impregnated with the nationalist precepts of Washington, it could not divest itself of Middle Western suspicions of "foreign entanglements." It armed these boyhood prejudices with a mighty argumentative power to prevent the entry of the United States into the League of Nations.

As one reads the Borah record, one is impressed with the number of fields in which he has depended upon words, phrases, verbal formulae, emotion-arousing symbols, rather than upon fact realities. While Borah never liked the idea of the use of collective force to implement the maintenance of peace, his substitute was an array of glittering phrases to lead the nations into a glorious renunciation of war. This was all signed and sealed in the Pact of Paris—and then given its requiem by the gun-fire in Manchukuo and on the Ethiopian plateau.

This past spring, Senator Borah undertook another great enterprise. Ignoring the fact that Big Business and High Finance possessed the reality of control in the Republican party, he sought to reinstate the command of the G.O.P. rank and file. It was a quixotic crusade; and yet, by undertaking it, Senator Borah was performing a distinguished public service. In success or failure, he still deserved high praise for having sought to redeem the symbol of his boyhood—the symbol of Republicanism as the party of freedom and of high ideals.

GEORGE FORT MILTON.

Chattanooga, Tenn.

A Program for Modern America. By HARRY W. LAIDLER. (New York: Thomas Y. Crowell Company. 1936. Pp. x, 517.)

Dr. Laidler presents "a political and economic handbook for today and a four-year program of social action on many of our most vital problems." It is supplemented by an ample bibliography and an excellent index, both of which will enhance its usefulness.

The book is packed with data on current concerns in American life. The leading personal and social features of widespread maladjustment in an industrial age pass in review, e.g., the hazards and incidence of child labor, unemployment, ill health, old age, the need for a shorter work week, collective bargaining, public works, and modern housing. Bound up with the industrial woes are the agricultural doldrums and the riotous waste of natural resources. Taxation and banking problems are identified with the excesses of laissez-faire, while electrical and railroad utility ills are scrutinized for their exploitative origins and practices. These indict-

ments are temperate and scholarly, but they are none the less vivid and penetrating.

On the constructive side, the program, moderate though it is for socialist thought, is less reassuring. The author has a profound faith in solutions which involve the emergence of vast authority and socially envisioned administration. He builds generously on the democratic assumption of the potential abilities of plain people for acting together in a common cause. The trend of the times is toward the merging of social, economic, and political power, and in the direction of such solutions as are here proposed: the abolition of child labor, unemployment and health insurance, old age pensions, a shorter work week and collective bargaining, programs of public works and public housing, conservation, the use of taxing powers for social reform and of currency and credit control in behalf of social ends.

No observer, however wishful his thought, can indulge in more than hope for early realization. The process of civilizing man is a slow one; the four-year program savors too much of a vast laboratory with 130,000,000 guinea pigs. Nature, with her insistence upon sad experience, and much of it, is likely to keep company with our experiments.

In the later chapters dealing with civil liberties, changing the constitution, emancipation from war, political realignment, social planning, and the coöperative moment, Dr. Laidler gives fresh meaning to the ethical significance of democracy and its concern with man's happiness. They are a sturdy call to reflection, to action, and to high courage. If the state as Gasset suggests, "is always, whatever be its form, an invitation issued by one group of men to other human groups to carry out some enterprise in common," Dr. Laidler has formulated a challenging, though modest, invitation, together with many suggestions of a specific sort as to the execution of the enterprise. If its acceptance is deferred or qualified and the political platforms of 1936 are more immediately preferred, one can but recognize that America's emotional attachments to an older equilibrium of liberty and equality outrun its willingness to change formally, and that its loyalties are stabilized in relationships and behavior that check rapid and formal revision. But the catalytic action of time and experience may run with the author. Perhaps he can afford to forego the immediate thrill which adoption of his moderately socialistic program would provide. It is a prophecy which must await the verdict of history; and such is the irony and paradoxical character of the latter that Republicans and Democrats may yet vie in its execution. Yet it is probable that even then we shall still find happiness as elusive as it is today.

RUSSELL M. STORY.

Pomona College.

Regional Factors in National Planning and Development. By the National Resources Committee. (Washington: United States Government Printing Office. 1935. Pp. xviii, 223.)

This is the most comprehensive study which has appeared dealing with regionalism. It seeks to find a guide for the consideration of the increasing number of problems which, while often local in character, belong to areas which overlap state lines. The National Resources Committee itself writes a foreword and makes nine recommendations, but the 223 quarto page report, with over sixty maps, is the work of the technical committee on regional planning consisting of John M. Gaus, chairman, Marshall E. Dimock, Jacob Crane, and George T. Renner.

The larger portion of the report consists of an analysis of what has been attempted in forming districts appropriate to the areas to be served. After noting the limitations upon individual state planning, the interstate coöperative and the interstate compact methods are examined. The Colorado River project, an example of the latter, is described at length. Naturally, the great experiment in the Tennessee River area, where the federal government itself has established the administrative agency, is analyzed in some detail. It is also noted that there are 108 distinct administrative areas used by some seventy different federal agencies.

The investigators are geographers, planners, and authorities on public administration. The material examined traverses the literature of the geography and natural resources of the United States, of metropolitan and regional planning and of the arrangements which have been made or proposed for the administration of various areas. One is conscious of a change of emphasis here and there throughout the report, but for a study of this magnitude involving so many factors, unity has been rather well preserved. The form of the report is particularly to be commended.

The report is a study rather than a program for action, and it is full of suggestions for those interested in the problems of sections which cut across governmental boundaries. Noteworthy is the proposal that centers might be established, rather than unified regions, for the collaboration of state and federal agencies. These would afford a greater flexibility. A division of the United States into twelve planning regions for composite administration of regional problems is nevertheless suggested. It is also interesting to note that the unit of the river valley—the one used in the great federal project in the Tennessee Valley—is, in most instances, thought to be little better than a unit based on state lines. The practical difficulties with the use of interstate compacts are set forth frankly. These may prove discouraging to those who have looked hopefully to this method of dealing with projects which cannot be treated by individual states alone. But the use of these compacts is favored, with federal participation when continuous administration is needed.

Advance planning is urgently recommended before development projects are undertaken. Indeed, emphasis on the need of state, regional, and national planning constitutes the dominant note of the report.

S. GALE LOWRIE.

University of Cincinnati.

Deutschland und die Vereinigten Staaten in der Weltpolitik. By ALFRED VAGTS. (New York: The Macmillan Company. 1935. Two volumes. Pp. xxii, 2030.)

Miss Jeannette Keim's pioneer work, *Forty Years of German-American Political Relations*,[1] written during the World War and inevitably colored by the hysteria of that period, remained until 1933 the only comprehensive work on German-American relations before the War. In 1933, Dr. Otto Graf von Stolberg-Wernigerode published a large monograph entitled *Deutschland und die Vereinigten Staaten von America im Zeitalter Bismarcks*.[2] Stolberg-Wernigerode's book, a product of exhaustive studies of European and American sources, deals intensively with the period 1861–90, and briefly with the last decade of the century. Alfred Vagts' two-volume work supplements Stolberg-Wernigerode for the nineties and carries the historical analysis of German-American relations through the Moroccan crisis of 1905–06.

Dr. Vagts' work reflects strongly the prevailing tendency to pierce through the surface of international politics. Deploring the failure of many diplomatic historians to analyze sufficiently the underlying forces of international politics (p. vii), the author sets out to interpret German-American relations from 1889 to 1906 as the resultant of many kinds of influences—economic and cultural as well as strictly political. With remarkable success, he breaks through the fiction of state personality, which so often conceals the struggles of individuals and groups who are the real actors upon the stage of world politics.

This work spans a period of growing rivalry between the private enterprises of the two countries. These private interests, both agricultural and industrial, feeling the pinch of foreign competition, sought protective legislation from their respective governments. In Germany, protectionism took the form not only of import tariffs, but also of discriminatory quarantine regulations against American products. The development and international repercussions of this protectionism are a continuing theme throughout the first five chapters. The next two chapters deal chiefly with financial problems, including German investments in American enterprises and the international ramifications of currency agitation dur-

[1] William J. Dornan, Philadelphia, 1919.
[2] Walter de Gruyter and Co., Berlin and Leipzig, 1933.

ing the nineties. Chapter 8 takes up the political problems connected with German emigration to the United States; and Chapter 9 goes into the elusive international repercussions of agitation and legislation on capital-labor relations and other purely domestic "social questions."

The remainder of the work deals with German-American relations in world politics. The Samoan question is treated in great detail. There are comprehensive chapters on the Far East, the Spanish-American War, the Virgin Islands, and naval relations. A chapter on the Venezuelan crisis of 1902–03 adds a number of details to that well-studied episode. Dr. Vagts traces with devasting precision the growth of the legend of Theodore Roosevelt's ultimatum to the Kaiser, concluding "dass die Geschichtsschreibung ihn in ihren 'Ananias-Club' verweist" (p. 1624). A long chapter entitled "Deutschland und die Monroedoktrin" completes the account of German-American relations in the Western Hemisphere. After a discussion of the first Moroccan crisis, the work concludes with a chapter entitled "Die Futilität der diplomatischen Harmonisierung in der imperialistischen Konkurrenz." This chapter restates the principal thesis of the book: that German-American relations continued friendly and harmonious as long as the economic interests of the two peoples remained essentially free from conflict; that the parallel development of both mercantilism and imperialism within both countries, beginning about 1880, brought Germans and Americans face to face as commercial rivals in Europe, Africa, the Pacific, the Far East, and the Western Hemisphere; that political and cultural differences were exploited to mobilize public support within each country on behalf of these imperiled interests; that this propagandist emphasis on national dissimilarities chilled the cordiality which had previously existed between the two peoples; and that this growing hostility was further fostered by the aggressive personalities of William II and Theodore Roosevelt—"die Kosmokraten" (p. 1932).

Dr. Vagts' work reflects extensive and painstaking research. He has worked through the archives of the Department of State and of the German Foreign Office; likewise the state archives of Hamburg and Bremen. He has drawn extensively from the private papers of Andrew D. White, Frederick W. Holls, Richard Olney, Theodore Roosevelt, and Henry Villard. He refers repeatedly to the published documents not only of Germany and the United States, but also of France and Great Britain. And his footnotes reveal a thorough knowledge and extensive use of biographies, contemporary newspapers, and special monographs.

It is a pity that this work is written in so involved and cumbersome a style. There is, moreover, no bibliography, a major defect in a treatise based upon so many and so diverse sources. The table of contents contains no topical synopsis of the various chapters. The subdivision of chapters into titled sections is not carried far enough to be of much assistance

to the reader. And the index is far from adequate as a guide to the text. In short, while this treatise will be used chiefly as a reference work, its structural defects will render such use extremely difficult.

This criticism, however, must not obscure the reviewer's opinion that Dr. Vagts' work is an extraordinary achievement. It is more than a detailed history of the political, economic, and social relations of Germany and the United States during a period of seventeen years. Those who laboriously plow their way through its two thousand closely-printed pages will find themselves rewarded in the end with a clearer insight into the motivating forces of national diplomacy and legislation, and also into the mercantilistic and imperialistic tendencies of national capitalism during those critical years at the turn of the century.

HAROLD H. SPROUT.

Princeton University.

The Commonwealth of the Philippines. By GEORGE A. MALCOLM. (New York: D. Appleton-Century Company. 1936. Pp. xviii, 511.)

This book is one of those rare volumes that successfully combine popular appeal with genuine scholarly worth. It is written in an informal, personal style and deals with almost every phase of Philippine life, from taxi-dancers to rice cultivation. Against this inclusive background the author has drawn a clear and accurate picture of the political, social, and economic development of the Filipino people. American contributions to Philippine polity are described and evaluated. Filipino leaders and Americans who have been associated with them since 1898 are characterized, in most cases with penetrating judgment tempered by marked restraint in expression. A systematic account is given of the organization and operation of the Philippine government during the various periods through which it has passed since the coming of the Americans. The constitutional and political processes that brought the Commonwealth into being are outlined skillfully, and the institutions of the new government are delineated as fully as is possible at the present time. The book ends with an appraisal of the political and economic prospects of the Commonwealth and the survival chances of the Philippine Republic that is to succeed it in 1946.

The present and the immediate future of the Commonwealth should cause worry, but not irrational hysteria, former Justice Malcolm believes. Concerning the probable fate of the Republic, however, he is gravely apprehensive. Politically, the Commonwealth is sound, although it is implied, if not directly stated, that the continuation of American sovereignty in the Philippines is an essential factor in its stability. The Commonwealth constitution is an organic law well suited to conditions in the Philippines and compares favorably with other national constitu-

tions. At the head of the Commonwealth government are experienced, realistic, earnest statesmen. The capacity of the Filipino people to set up and maintain an autonomous government protected by the United States has been amply tested and satisfactorily proved.

A real danger to the stability of the Commonwealth and to preparations for independence, however, lies in the "discouraging" economic situation that will be created during the second five years by the imposition of gradually increasing export duties upon important classes of Philippine goods destined for the American market. While public finances and public order probably will be maintained during the first half of the Commonwealth decade, with the aid of the United States high commissioner and with the United States army and navy available for emergencies, serious political and social disturbances may occur during the last half of the transition period because of the liquidation of many industries and the flight of capital from the country.

As to the Philippine Republic, fear, real or unreal, grips the Filipino people—fear of change, fear of the unknown, fear of the uncertainty in which the Tydings-McDuffie Act has left the future of the Islands. The internal peril to the Republic will be unrest among the masses caused by diminishing purchasing power and incited by unscrupulous agitators. It will take the form of seditious and communistic insurrection or near-insurrection. The external danger will come from the menace of Chinese penetration and Japanese aggression. The postulate of both risks is America's unformed intentions following the recognition of Philippine independence.

In the most outspoken portion of the book, Justice Malcolm clearly reveals that he regards the ultimate domination of the Philippines by Japan as more than a probability. Nor does he believe that the United States should assume any commitment to protect the Islands from such eventuality. "For once placing American interests first," he would have the United States "make such trade agreement with the Philippine Republic as is mutually profitable; draw back the first line of defense to Hawaii and Alaska, and avoid becoming a party to any arrangement which would involve the United States in dangerous political alliances with foreign powers." The author, indeed, is not "altogether convinced" that America should even go so far as to become a party to a treaty for the perpetual neutralization of the Philippines.

There are few Americans, if any, whose views upon the Philippine Islands and the relations of the United States therewith are more worthy of serious consideration than are those of Justice Malcolm. He speaks from the vantage point of an independent position of retirement after thirty years of distinguished public service in the Insular government, eighteen of them as a member of the supreme court of the Islands. He

has always been notably sympathetic with the people among whom he has lived and worked, yet has never lost his sturdy Americanism. His latest volume, although revealing sedulous care not to injure anyone's feelings and thereby at times falling short of telling the whole truth, is accurate in statement and mature in judgment. In the opinion of the reviewer, it ranks with the best of the books that have been written about the Philippine Islands.

RALSTON HAYDEN.

University of Michigan.

Theories of International Relations. By FRANK M. RUSSELL. (New York: D. Appleton-Century Company. 1936. Pp. 551.)

As the author states in his preface, this volume of the Century Political Science Series "represents a new approach" to the problems of international relations, for "it is designed to do for [that] field what historical surveys have done for the entire field of political thought." Distinctly, this volume is a survey, inasmuch as no attempt is made by the author to present a systematic thesis of his own in regard to international affairs. The primary emphasis is upon war in human society; the technique of presentation consists in assembling summaries of and quotations from the works of outstanding thinkers and writers from Confucius to John Dewey.

After a preliminary chapter on war in primitive society in which the conclusion is drawn that "different primitives, under the necessity of adapting themselves to varying environments, show marked differences in social customs and group reactions" (chiefly in regard to war), the reader is guided through the ages and the civilizations from ancient China and ancient India to nineteenth-century imperialist Europe. *En route* he is shown samples of what men like Mencius, Aristotle, Cicero, Seneca, St. Augustine, Dante, Machiavelli, Bacon, Victoria, Grotius, Kant, and Treitschke said and thought concerning politics in general and war in particular. Then follow, in the second half of the book, several chapters on topics like pacifism, imperialism, outlawry of war, nationality, disarmament, regionalism, socialism and communism, integral nationalism, and finally "Laissez-faire vs. International Organization." In this last chapter, Professor Russell concludes that "coöperative and pooled security seems to be the only answer to present-day needs" (p. 546) and that "there is no reason for believing that we can skip the policeman stage of international government" (p. 548). Further, he states that what is needed is "a dynamic international political system capable not only of maintaining the status quo against violent change but also of modifying it . . . whenever justice and equity demand" (p. 547), though admitting

that "states under iron dictatorships . . . can hardly be expected to adjust their thinking to a democratic procedure in the field of international relations," and that "no useful purpose is served by glossing over the obstacles to the realization of an international system" (p. 549).

It was evidently not the author's object to furnish a critical discussion of the problems of organizing the international policemen, to offer suggestions as to how we are to have our "security-status quo" cake and eat it too, as we should have to do if we are to have a dynamic system, or to explain how the various obstacles are to be eliminated or circumvented. The chief purpose of the book seems to be one not of analyzing or solving problems but of showing in panoramic fashion what eminent individuals, past and present, have said about them. The contribution is, then, mainly that of giving perspective to students of international affairs who after myopic concentration upon miserable contemporary conditions may be relieved or may be more disheartened to learn that current opinions on war and the maintenance of peace were also held in ancient China and Greece and that, after all, "there is very little new under the sun." The volume constitutes a veritable "Bartlett" of quotations on international problems.

The later chapters dealing with questions such as disarmament, security, and nationalism add little to what is now already available in standard textbooks on international relations. Excerpts from Marx, Hobson, Bourgeois, Alvarez, Wilson, Briand, Nicholas Murray Butler, and innumerable others follow one another at a dizzy pace. This Literary Digest method of handling the material, with quotation succeeding quotation without much in the way of evaluation or integration unfortunately leaves a blurred impression.

The reach of the book is thus vast; it represents a valiant effort to give historical substance to a field which desperately needs historical and theoretical synthesis; but one wishes that the author had not spread the matter rather thin by trying to cover so many random topics toward the end of the book. One hopes that this is but a pioneering effort by Professor Russell, as he himself says, and that he will proceed, partly on the basis of the useful bibliographies which appear at the end of each chapter, to explore even deeper into the problems of international political and legal theory, furnishing us with more distinct views on the basic causes of international friction and on such venerable stumbling blocks as sovereignty and equality, which are barely touched upon in the present work. Meanwhile, this volume, as previously indicated, supplies a convenient summary, useful for ready reference purposes, of what many persons have said on international issues.

PAYSON S. WILD.

Harvard University.

The Eve of 1914. By THEODOR WOLFF. (New York: Alfred A. Knopf. 1936. Pp. 655.)

This book, by the brilliant editor of the *Berliner Tageblatt*, was first published in 1934 under the title *Der Krieg des Pontius Pilatus*, and now appears in an excellent translation by E. W. Dickes. It is another book on the origins of the World War, and deals particularly with the five-year period immediately preceding the war. It is not an exhaustive historical examination of documents and events, as are the works of Harry Elmer Barnes and Sidney B. Fay, but it is a sweeping account of the political and diplomatic developments before the war, with a penetrating analysis and a convincing interpretation of those developments.

Although a German, Theodor Wolff by no means absolves Germany from responsibility for the war. With respect to the maze of events and the diplomacy of the pre-war periods, his conclusion is that "there is right and wrong on both sides," but with so much emphasis on German blunders as to impose a heavy share of blame on Germany even for those more remote causes. With respect to the more immediate pre-war developments, Wolff appears to throw even more blame upon the Central Powers. There is no question in his mind about the special guilt of Austria-Hungary. The harsh demands upon Serbia, the refusal to reveal the text of the Serbian reply even to her ally, Germany, the falsification of the yielding and conciliatory nature of that reply, the bombardment of Belgrade after it had surrendered—these and other events are pointed to as evidence of the war fever on the part of the Austro-Hungarian government.

But Wolff also indicts the German government, and the counts in his indictment may be summed up about as follows: (1) the impulsiveness of the Kaiser, now for war, now for peace, but always (as in the case of his comments on the Serbian note) for peace just too late; (2) the weakness of Bethmann-Hollweg, who apparently desired a policy of conciliation, but blundered and finally yielded to the war party; (3) the German support of Austria-Hungary, essentially in the form of a "blank check," and given without knowledge of the text of the Serbian reply; (4) the failure to suppress, and probably the encouragement of, the organized demonstrations for Austria and against Russia, thus giving the impression of a popular demand for war; (5) the flat refusal to participate in the conference proposed by Grey, to which France, Russia, and Italy had agreed; (6) the mediation with Austria so put as to indicate "no sign of any desire actually to maintain peace," but only to escape blame for the war.

Wolff thinks that none of these things necessarily indicates a desire for war, but only a blundering stupidity as to the results that must follow from such diplomacy. In this respect, he blames all of the Powers and most of the responsible statesmen, but he does seem to feel that the Germans were somewhat less conciliatory and considerably more blundering

than the Allies. He is himself a liberal democrat, and evidently considers that the lack of any popular control in the German system was at least partly responsible for these blunders. "More appalling than anything else was the thought that here and in the building alongside (that is, the Chancellor's palace and the Foreign Office) the fate of a great nation lay in the hands of a few officials who were acting in entire freedom from any sort of control." The German press and public were completely uninformed as to the nature of the Serbian reply and would certainly have considered it satisfactory and no cause for war, as did the Kaiser himself when it was too late.

Wolff is also apparently convinced that democratic government is actually more efficient than autocratic government. He devotes considerable attention to the mistrust of one another on the part of high German officials, and he endorses the view of Ernst Jäckh that "behind the apparent solidity of the façade of the German Empire those responsible for the administration were all at sixes and sevens, a perpetual war was going on between all sorts of authorities, the various departments of government and the subservient members of the Court were fighting in utter disorganization for power and influence, while in the democratic countries there was perfect order and unison."

The present tragedy is that a German so liberal and so enlightened is not tolerated in Germany. Theodor Wolff has been in exile since 1933; the *Berliner Tageblatt* is no more; and the book here reviewed was published in its original edition, not in Germany, but in Zürich. In his preface, Wolff pays his respects to the present Hitler régime. Clearly, he assumes the same unintelligent handling of world problems as in 1914, and therein lies the danger of another war.

CLARENCE A. BERDAHL.

University of Illinois.

What Next in Europe? By SIR ARTHUR WILLERT. (New York: G. P. Putnam's Sons. 1936. Pp. 305.) [Published in Great Britain as *The Frontiers of England.*]

Inside Europe. By JOHN GUNTHER. (New York: Harper and Brothers. 1936. Pp. x, 470.)

Sir Arthur Willert has long been an able interpreter to the press of the principles underlying the foreign policy of his country. Since leaving the Press Department of the Foreign Office, he has endeavored to mediatize to the British, and now to the American, public the problems, primarily European, which face Britain, making illusions of quasi-isolation quite untenable. The same *leitmotif* for the United States will be read out of the book by the American consumer. The treatment is cautious and fairly

well balanced, but bristles with imponderables. Beginning with an intimate analysis of international politics in general, the author portrays Europe's fatalistic return to the politics and ethics of the balance of power in terms of gangsterdom, at once so simple and convincing that every American should find it understandable.

Obviously familiar with pre-war Central Europe, Sir Arthur tellingly depicts the general situation, above and beneath the surface, in Nazi Germany and Fascist Austria. While hiding nothing of Nazi anti-Semitism, and exposing the futility of anti-religion—whether of the neo-paganist or persecutive variety—in Germany, the author nevertheless leaves a rather "gilded lily" impression of the contemporary Third Reich. He appears to have accepted at face value, in the days following German rearmament, the solemn protestations of highly placed Germans (pp. 94–95) that there was no intention of occupying militarily the demilitarized zone along the Rhineland! Danzig is done with realism and excellent discernment, but at the borders of Eastern Europe this incisive understanding stops.

Apparently Sir Arthur has only a fragmentary and somewhat superficial view of realities in this quarter: Memel is quite a stain on the escutcheon of the Allies; Lithuania, for being uncompromising over the rape of her territory, is cavalierly dismissed (p. 134) as a nuisance. There is no apparent grasp of the significance of the Baltic Entente; the Little Entente is regarded as "disruptive rather than conciliatory" in its influence; the non-aggression treaties of the U.S.S.R. are characterized as of no particular intrinsic value" (p. 142).

Allowance must, of course, be made generously for dissentient viewpoints, but there is scant excuse for certain palpable errors of fact. On p. 115, Sir Arthur, in direct quotation, misstates, then misinterprets, Wilson's Thirteenth Point regarding Poland. Again, to attribute Soviet hostility toward certain Powers to the fact that "France and Great Britain, *together with the United States*, were the principal authors of the Peace Treaties which had confirmed the ownership by her western neighbors of vast territories which used to belong to Russia" is simply to traduce the facts. Not an inch of territory, the political independence of which had not previously been assented to by Russia, was covered by the Treaty of Versailles. Finland was not touched by the peace treaties, and the United States had no hand in the Bessarabian treaty. It is unfortunate that inaccuracies of this kind should detract from the effectiveness of a forthright presentation by a man so highly placed.

Sir Arthur concludes his volume by a trenchant analysis of the baleful effects of economic nationalism and pleads, with a strange mixture of stern realism and animal faith, for a "supreme effort" at partial and peaceful treaty revision. Perhaps the most poignant note in the whole

volume is its revelation (p. 292) of the "tragic discrepancy between the fears of the governments and the desires of the peoples" for peace.

By contrast with the pedestrian stride of Willert, John Gunther writes with a brilliant, penetrating, neo-Carlylean touch, believing mightily and etching powerfully the impacts of personality on history. Though focused on personality, his is no peep-hole history of Europe-between-wars just for gossip's sake. Rather is it a quest, psychoanalytic and otherwise, into the vast hinterlands of character, for the reasons behind personality impact in an age of great dictatorial leaders. Here is at once an encyclopedic account of European events in terms of the variform *vitae* of the actors and a synthesis of all types of influences, based on the fact of their concurrent existence. What gives to Gunther more than passing value is his ability verbally to photograph his characters, now in close-ups, now against the tapestry of the contemporary social scene, now in the midst of their revealing *entourage*.

But they are more than murals of modes and manners among the politically dominant; they give one a sense of written television, of extreme but realistic contemporaneousness, of the stuff and substance of which Europe in our day is made. One can only regret that the strong men of the Baltic and the contemporary Vikings are not included along with Baldwin, Laval, Hitler, Mussolini, Stalin, and Kemal. No one dealing with European politics can overlook the vitalizing and dynamic values of Gunther's presentation.

MALBONE W. GRAHAM.

University of California at Los Angeles.

War and Diplomacy in the Japanese Empire. By TATSUJI TAKEUCHI. Introduction by Quincy Wright. (Garden City: Doubleday, Doran, and Company. 1935. Pp. xix, 505.)

When Japan Goes to War. By O. TANIN AND E. YOHAN. (New York: The Vanguard Press. 1936. Pp. 271.)

Togo and the Rise of Japanese Sea Power. By EDWIN A. FALK. With a Foreword by Rear Admiral Bradley A. Fiske. (New York: Longmans, Green and Co. 1936. Pp. xiii, 508.)

Professor Takeuchi's study was undertaken as part of "a coöperative investigation of the causes of war" initiated in 1927 by the Social Science Research Council at the University of Chicago. Whatever general conclusions may eventually be drawn from the larger project of which this volume forms a part, Professor Takeuchi has succeeded in throwing a flood of much needed light upon the machinery, the methods, and—to some extent—the motives of Japan's diplomatic dealings with the outside world.

Of the three sections into which the book is divided, the first deals briefly with the structure and constitutional functions of the various governmental organs concerned with the direction of foreign affairs. Part II treats in detail the procedure followed in a number of diplomatic incidents, beginning with Japan's early efforts to secure the revision of her "unequal treaties" and ending with her withdrawal from the League of Nations; and Part III summarizes, in three chapters, the author's conclusions with respect to the treaty-making power, the war power, and the formation of policies. The first and third parts, both of which are necessary to a well-rounded treatment of the subject, are excellent; but it is the eighteen "case studies" in Part II that give the book its outstanding value; for here the author puts flesh and blood upon the bare bones of the Japanese constitution, showing us the government in actual operation and, behind this operation, the conflicting interests and theories of state which during the last half-century have made Japan's foreign policy a reflection of her internal differences. The particular case studies which will, perhaps, be of greatest interest to the American reader are those dealing with Japan's entry into the World War, the Washington Conference, the London Naval Treaty, and the Manchurian crisis. Hardly less enlightening, however, are the chapters on the Russo-Japanese War, the annexation of Korea, the Tsinan incident of 1928, and the Pact of Paris. Indeed, the casual reader as well as the serious student will find information of permanent value in every chapter of the book.

In the face of the wealth of material actually provided, it may appear somewhat ungracious to complain of omissions. Yet there are a few points which the reviewer wishes could have been touched upon or treated more fully. There is no reference, for example, to Russo-Japanese relations in the period 1907–16, to the plans contemplated by the Tokyo government in August, 1914, in the event of German compliance with Japan's ultimatum, or to the alleged secret memorial of Baron Tanaka in July, 1927; while the sketchy treatment of the Lansing-Ishii exchange of notes and Japanese-American friction in Siberia leaves something to be desired. The very brevity of this list of omissions, however, attests the importance of the book as it stands. Painstaking scholarship of the highest order, utilizing source material which is largely unavailable to Western students, has produced an invaluable addition to the growing list of authoritative works on the Japanese Empire.

When Japan goes to war, what will be the outcome? This is the question asked and answered by Messrs. Tanin and Yohan. In contrast with the scholarly work of Professor Takeuchi, the second volume on our list may best be described as a piece of reasonably high-grade journalism that has lost much of its sparkle during the year and a half interval between the completion of the manuscript and its publication. The authors may be

quite correct in their belief that the Japanese militarists are planning a war against Soviet Russia, that the conflict will inevitably develop into a war of exhaustion, and that Japan's social and economic system will prove incapable of maintaining such a struggle; but the evidence assembled in support of these propositions adds little or nothing to what can be derived from an intelligent reading of the leading English-language newspapers and periodicals published in China and Japan.

Mr. Falk's book, in spite of an imposing bibliography and a plentiful use of footnotes, is of a decidedly popular nature. The early chapters, possibly because of a scarcity of solid material, are somewhat marred by over-writing, yet the author's enthusiasm for Togo and for the Japanese navy does not prevent severe condemnation of Tsushima's hero for his ruthless sinking of the *Kowshing* in 1894. The best chapters of the book are those dealing with the two great naval engagements of the Russo-Japanese War, the battle of the Yellow Sea and the crowning victory of Tsushima. For additional material relating to Togo's later years, Mr. Falk might profitably have consulted Professor Takeuchi's work, which is cited in his bibliography. Except when the principal hero is on the stage, the Japanese navy comes in for rather perfunctory treatment.

G. NYE STEIGER.

Simmons College.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND POLITICS

The Supreme Court of the United States is no problem, according to David Lawrence's *Nine Honest Men* (D. Appleton-Century Co., pp. 164). The only problem is to restrain Congress from passing bills which the Court obviously will have to declare unconstitutional. Mr. Lawrence's volume, therefore, was written for politicians, not scholars. There are, however, a number of interesting ideas hidden under the veneer of journalism. The author asserts that the principles of constitutional law are so plain that a layman could have predicted that much of the New Deal was unconstitutional. And what is more, he proves it by quotations from his own newspaper dispatches in which the decisions in the Gold Clause cases, the N.R.A. case, and the A.A.A. case were successfully foretold! It will be interesting to see whether his guesses that the payroll taxes in the Social Security Act and the lobbying provisions of the Public Utility Act are void will be borne out by judicial decisions. Certainly his comment that a well-drafted minimum wage law would be upheld (p. 75) may need revision in the light of the recent decision invalidating the New York statute. The author's suggestion that the Attorney-General's office be taken out of politics and be requested to prepare an opinion on the

validity of every important bill is attractive, although perhaps a bit idealistic for the present state of American politics. The proof of the lack of partisanship in past Court decisions, and the argument against legislation which would deny federal courts jurisdiction in constitutional cases, are both timely and suggestive. The proposed substitute for the N.R.A.—waiving the penalties of the anti-trust laws for those combinations approved by the Federal Trade Commission—might well be explored. From the point of view of the serious student of government, however, it is unfortunate that the author did not develop these suggestions more fully. Even as campaign propaganda, his efforts might have been more successful had he done so.—RODNEY L. MOTT.

Although Professor Howard W. Odum's *Southern Regions of the United States* (University of North Carolina Press, pp. 664) is a veritable encyclopedia of the South, one point stands out clearly. The South is marvellously endowed with natural and human resources, but has failed to use these resources to full advantage because of deficiencies in capital, in education, and in social and economic organization—deficiencies which could not be remedied because of a lack of tax resources and the drain of money and talent to other sections. The causes and consequences of these deficiencies are not confined to the South, and the remedies must be planned as a regional program within the nation if the South and the nation are to benefit. Necessarily, some help must come from outside the region. On the ground that the South may serve as a proving ground for regional development, it is proposed that a twelve-year program be undertaken at the earliest possible date. Any effort to define regions and sub-regions must precipitate debate, but the use of seven hundred indices to differentiate the regions should restrain those who dissent from Professor Odum's decision to exclude the border states from the South and to define a Southwestern region including Texas, Oklahoma, New Mexico, and Arizona. Most of the maps in the book use states as the basis for analysis, thus carrying out Professor Odum's view that the states will long continue as the essential units of government despite the fact that economic factors will ultimately compel the use of regions and sub-regions instead of allowing us to drift into morasses of states' rights and federal centralization. There are no new proposals for legislative or administrative machinery for the regions or the sub-regions. *Southern Regions of the United States* will, no doubt, be used extensively for reference purposes because of its high quality and the mass of information assembled. It is therefore regrettable that there are no footnotes and few references, other than the short bibliography, to direct the reader to other materials. It is also regrettable that so few of the hundreds of maps and tables use the county as the basic unit.—WARNER MOSS.

In *The Negro Question in the United States* (International Publishers, pp. 224), James S. Allen considers the Negro problem in an interesting manner. Some of his chapter headings will indicate the trend of his discussion: "The Black Belt: Area of Negro Majority"; "The Economic Survivals of Slavery"; "The Nature of Share-Cropping"; "Southern Industrialization and the Black Belt." Mr. Allen makes a severe indictment of the plantation economy of the South. He points out that remnants of slavery still exist. The reviewer will agree with the author's criticism of the tenant system. There is no justification for it economically or ethically. This system makes the tenants shiftless and indifferent and is the reason why so many Southern states are so poor today. But with Mr. Allen's solution of the Negro question the reviewer cannot agree. Mr. Allen proposes that the Black Belt be allowed self-determination. His solution is absurd and untenable. If this principle were applied all over the United States, the country would be split into many petty states and divisions. Besides, what would become of the great minority of white people in the Black Belt? Mr. Allen believes that the poor white tenants would join the Negroes. It is quite obvious that he knows nothing about white tenants in the South. They are more prejudiced against Negroes than any other class; racial conflicts are largely brought about by this group. It is among the poor whites who compete with the Negroes that racial animosities are keenest. Of course, Mr. Allen does not think that the Black Belt will be allowed self-determination until the Communists control the United States. So there is no need for immediate worry on the part of Southerners.—CULLEN B. GOSNELL.

The difficulties in the government control program and the difficulty of evaluating that program are emphasized in *Cotton and the AAA* (Brookings Institution, pp. xv, 389), by Henry I. Richards. Champions and critics of the cotton program of the past three years have ignored factors unfavorable to their respective views, and it is, therefore, refreshing to have this objective effort to weigh all elements in the situation. As the author frankly says, landlords received favorable treatment in comparison with tenants, but this favoritism was necessary in order to get the landlords into the scheme and to get it under way. In 1934, the government had an unfortunate loan policy which pegged the price of cotton too high and kept it out of the channels of trade and industry. The acreage reduction program was relatively inflexible and unscientific, with little attempt to take account of the comparative advantages of different areas of the cotton belt. The A.A.A. increased the income of cotton farmers, even aside from government benefit payments, but this three-year increase will be offset by future losses through expansion of foreign production and decrease of foreign consumption of American cotton. It is

noted that the control program was administratively effective. The work is a capital economic analysis, but somewhat inadequate as a social study.—H. C. NIXON.

For fifteen years, Abraham Epstein has been the leading advocate, in this country, of old age pensions. In 1933, his American Association for Old Age Security became the American Association for Social Security and he published the first edition of *Insecurity; A Challenge to America.* A revised edition (Harrison Smith and Robert Haas, pp. xv, 821) has now been published. This differs from the first edition by the inclusion of two final chapters and the omission of an introduction by Secretary Perkins. One of the new chapters is a violent attack on the Social Security Act; the other, a much shorter account of the "latest state developments in social security." In the last two chapters, Mr. Epstein repudiates practically everything he formerly said on the subject, including some statements which are retained unaltered in the earlier chapters of this revised edition. Nevertheless, this book must be ranked among the most important treatises in the field. The first thirty-five chapters are an excellent statement of the case for social insurance; the last two chapters, a convenient collection of the arguments against the Social Security Act by its most bitter opponent.—EDWIN E. WITTE.

STATE AND LOCAL GOVERNMENT

In his *Regulation of Public Utilities in New Jersey* (Waverly Press Inc., pp. 225), M. C. Waltersdorf has closely restricted his treatment to the legal and administrative problems of utility regulation. Comparatively few excursions are made into the background of utility management, economics, and politics. His narrower presentation of regulative problems, however, clearly reflects his thorough understanding of the broader foundation upon which schemes of regulation are based. With academic reserve, the author is neither a "baiter of utilities" nor a "savior of the utility stockholders." In an orderly process, well fortified with references, he guides the reader through the intricacies of the Utility Commission's administrative technique in establishing standards of service, valuation appraisals, uniform accounting, control of security issues, and rate-making. Two chapters are reserved for an analysis of the special problems of electric railways and motor buses, and the holding company. The defects found in the New Jersey system of control might be attributed with equal force to most other states. Professor Waltersdorf believes that the consumer should be better represented in the proceedings of the Commission, that there is at present an inadequate control of operating expenses, and that the Commission is greatly hampered by its lack of funds to conduct independent research. He would require the minor personnel

of the Commission to be appointed on a merit basis. He suggests that the commissioners be appointed on the basis of legislation which would more clearly define requirements of training, experience, and background. The term of office should be increased from six to ten years. The author recognizes the need for a more definite standard of determining the rate-base, but attempts no solution of this problem other than a tentative endorsement of the "prudent investment" theory. It can be said in his defense that the efforts of the courts and the experts to solve this problem have tended to emit more heat than light.—CHARLES C. ROHLFING.

An excellent survey of the important developments in municipal government and administration during the year 1935 is found in *The Municipal Year Book, 1936* (International City Managers' Association, pp. viii, 475), edited by Clarence E. Ridley and Orin F. Nolting. The year-book opens with an analysis and interpretation of the developments by functions in the field of municipal administration. These contributions have been prepared by authorities in the different fields, with the coöperation of correspondents in each of the states. In Part II, under the general title of "Governmental Units," the number of local government units by types and states, with an analysis of changes during the last four years, is given. The number of governments in metropolitan districts of over one million population receives special attention. Intergovernmental arrangements for coöperative action of cities are summarized. Sections are devoted also to state municipal leagues and to federal-city relations. Part III of the year-book is devoted to municipal personnel. In addition to a directory of chief city officials in all cities of over 10,000 population, data are included showing the number of employees, the number of appointments and separations, and personnel agencies. The material included in Part IV, "Municipal Finance," is especially valuable. The sections on trends in municipal debts covers the period 1916–36. State limitations on local indebtedness and local property taxes, state supervision of local financial processes, state-administered locally-shared taxes, and the amount of federal grants-in-aid and their effect upon local units receive consideration in separate sections. Part V, which is entitled "Sources of Information," includes a list of model municipal ordinances which have been prepared by state leagues of municipalities, by national organizations, and by federal and state governmental agencies. Services and information available from 150 federal agencies and from many national organizations are listed according to municipal activity. The section ends with a list of selected books, pamphlets, and reports published in 1935, along with a list of the more important current periodicals of value to American municipal officials. This, the third issue of the year-book published by the International City Managers' Association, is not

only the largest but the best. It should prove of great interest and value to every person interested in the improvement of local government and administration.—CHARLES M. KNEIER.

Between the covers of a seventeen-page pamphlet, *Financing New York City* (American Academy of Political and Social Science), William Whyte has succeeded in condensing an exceptionally accurate and complete sketch of the finances of the second most important spending unit in the United States. This accomplishment is made more remarkable by the fact that at the time the pamphlet was written the author was an undergraduate at Swarthmore. The study is divided into eight parts. The first four outline the governmental set-up of the city's expenditures, revenue, and debt; and in Part Five more detailed attention is given to the rapid transit problem. These first five parts are merely background, however, for Part Six, "The Depression." Here the author presents the story of New York City's financial straits from 1930 to 1935 and the emergency policies applied under Mayors Walker, McKee, O'Brien, and LaGuardia. It is a dramatic story, and Mr. Whyte succeeds in preserving the drama without doing violence to the facts and figures. The last two parts are given over to predictions as to the immediate future and to recommendations for improvements. With the conclusions and recommendations, the reader may find cause for disagreement or skepticism, for Mr. Whyte displays considerable temerity in drawing conclusions from evidence which is not always complete. The primary objective of the pamphlet, however, is not to propose solutions to major financial problems, but to reduce an intricate situation to terms which can be understood by the novice or layman, and for achieving this objective Mr. Whyte is to be sincerely congratulated.—ELTON D. WOOLPERT.

FOREIGN AND COMPARATIVE GOVERNMENT

To those who hope that significant, and perhaps fundamental, social reforms may be brought about by democratic and parliamentary means, John Eric Nordskog's *Social Reform in Norway* (University of Southern California Press, pp. vii, 184) should be reassuring. In the small but well-governed democracy where the respected King Haakon reigns in form, but where the popularly-elected Parliament (Storthing) really rules, the interplay of the forces of nationalism and social democracy has resulted in a program of social legislation which is worthy of careful study. While this program is nationalistic in the sense that it is affected by the feeling of national social unity in Norway, it is clear that the labor movement and the growing Labor (Arbeider) party has played an important part in its development. The volume is both historical and descriptive. The various social reforms are traced from their inceptions; and the legislative

measures which brought these reforms into being and the machinery used in their administration are analyzed and evaluated. A very interesting part of the social reform in Norway is the concession laws regarding the transfer and ownership of natural resources, covering all lands but in particular mineral rights and waterfalls. The ownership of waterfalls is controlled in the interest of the general public; for example, no private person or corporation can own a waterfall productive of more than 1,000 horsepower, and all ownership is subject to restrictions. All land and resources are also protected very closely against foreign capital and foreign influence. Industrial accident insurance, sickness insurance, old age pensions, unemployment insurance, are parts of a well-administered program. Industrial arbitration has had an interesting history. Compulsory arbitration has been tried, but is now practically superseded by an effective voluntary system. Regulation of hours of labor (including child labor laws), protection of workers during working hours, and a comprehensive housing program are other features. A state grain monopoly exercises wide authority over prices, sale, and importation of all grain products used for food. Grain mills may be expropriated by the state on payment of just compensation. Very interesting to the student of public administration is the hierarchy of administrative boards which allows the local community to play an important part, while yet leaving the final responsibility with the king and Storthing. The author concludes that the Norse democratic and constitutional institutions are adaptable for all necessary social reforms and that socialism in its broader sense is unlikely to come. He believes that Norway's experience with Russian propaganda has resulted in a strengthening of her national social solidarity. A selected bibliography of fifteen pages is made up mostly of Norwegian sources and includes a series of official statistical studies issued by the Norwegian government. The volume can be recommended to any one interested in the problem of social legislation and administration.—Ben A. Arneson.

How has the federal form of government been brought about in India? What are its powers and functions? What are some of its unusual features? K. V. Punniah, who is a professorial lecturer in history at the Andhra University, India, discusses these questions in his *India as a Federation* (Madras: B. G. Paul and Co., pp. 208). The book is well documented and has all the ear-marks of careful study and research. The author asserts that the Indian federation is a unique piece of political architecture, quite unlike any other existing in the world. The British who framed the new constitution for India have tried to make it as painless as possible, but it has proved to be a bitter dose. India has been given only the form of self-government without the substance—or, to appro-

priate the stronger expression of President Jawaharlal Nehru of the Indian National Congress, India has now "a charter of slavery." The immediate urge behind the federation, it is pointed out, is the necessity of using the autocratic princes to curb the spread of rising democracy and also of supporting the Mohammedans, as a selfish minority, to oppose the will of the majority. Indeed, Mr. Punniah suggests that the federation has been specially designed to weaken the growth of democratic nationalism and tighten the hold of England. Under this arrangement, the old imperial policy can be expected to go on as usual: divide and rule. Ultimately, the new Simon-Hoare reforms will fail as did the Minto-Morley and Montagne-Chelmsford reforms. This slim little volume has been written with proper academic restraint; and it is a wise and a trustworthy guide to the intricate political machinery launched under the federation. —SUDHINDRA BOSE.

Emil Ludwig's *Defender of Democracy; Masaryk of Czechoslovakia* (Robert M. McBride and Co., pp. xi, 278) is not supposed to be a biography, but rather a character study. Consequently, no coherent or systematic account of Masaryk's life or work is attempted. The book is a report of a series of interviews which complete the details of the picture drawn in an earlier essay on Masaryk, first published in *Nine Etched from Life* and here reprinted. Masaryk, influenced above all by Plato and the teachings of Jesus, emerges as the philosopher-statesman, champion of the cause of the oppressed and of liberty, but always the practical politician. His profound religious views are portrayed as having greatly influenced his political ideas and practices. "As a theist," Masaryk states, "I must believe in Providence. I am firmly convinced that my life is not wholly of my own planning . . . Politically, it is important that religion sanctions morality and therewith rules everything, even political conduct." The most significant part of the book is the chapter on "Authority or Freedom?" It is exhilarating to hear expressed such faith in democracy as Masaryk possessed. He spoke, however, not of a democracy bound up necessarily with parliamentarianism or the forms of the past. "I would merely emphasize the fact that democracy is possessed of sufficient flexibility to enable it to meet extraordinary difficulties with extraordinary means. . . . In a democracy it is not to be forgotten there is a cabinet with executive functions of its own." Democratic executives exist as well as democratic legislatures. Interesting and well written in Ludwig fashion, the book contains nothing startling and is not of equal status with the author's more pretentious biographies. But one lays down the volume with the impression of an extraordinary personality in his mind; and that is exactly what Ludwig hoped to accomplish.—E. C. HELMREICH.

John B. Holt's *German Agricultural Policy, 1918–1934* (University of North Carolina Press, pp. xvi, 240), which was written originally as a doctoral dissertation at the University of Heidelberg, is a useful monograph on post-war German agriculture and its political, social, and economic implications. The agricultural problem is discussed chronologically in four periods—Social Democratic rule; the years of inflation; recovery and world depression; and National Socialist agrarianism. Throughout the study, the attitudes and policies of the different political parties and economic groups are analyzed in considerable detail. The various phases of the agricultural question are treated, including taxation, tariffs, subsidies, credit, price and production control, farm labor, land settlement, etc. Some of the recent developments are omitted, such as land reclamation schemes under the *Arbeitsdienst*, the Prussian *Landschuljahr*, and the restrictions on urban employment in favor of an abundant supply of rural labor. Moreover, the results of other National Socialist agricultural measures are set forth rather sketchily. In general, the book suffers from an undue compression of the material, which makes it more of a summary than a full-length account. Even so, it has genuine value as a guide to the subject, a value which is enhanced by a good bibliography, maps, tables, and an index.—R. H. Wells.

Professor William Thomas Laprade has made a most exhaustive research into the files of English newspapers, journals, and pamphlets of two hundred years ago for the material out of which he has written his interesting *Public Opinion and Politics in Eighteenth-Century England* (Macmillan Co., pp. 436). The narrative covers the period from 1700 to the fall of Walpole in 1742, the formative period in the development of the cabinet system, party government, and the power of Parliament. The book tells the dramatic story of British politics and political journalism in an age when public opinion was first making itself felt in public policy, and it offers a wealth of hitherto inaccessible material on the confused currents of British life and opinion of that age. The pages are filled with quotations from journals and newspapers of the day and contain intimate accounts of and sidelights upon the contemporary intrigues, gossip, and political and social groups, and the forces behind the scenes. A great galaxy of public figures in every walk of life is presented against a vivid background of current discussion and public event. Parliamentary debates and controversies, governmental crises and clashes between the parliamentary leaders and the monarchs, are set forth through the use of original discussions and comments taken from the publications of the day. A very elaborate index contributes much to the usefulness of the book, and a vivid, spontaneous style to its readability.—Harold R. Bruce.

The second edition of Frederick Schuman's *The Nazi Dictatorship* (Knopf, pp. xiii, 516) has been amplified by a twenty-page chapter which deals with the events of the past year. Except for this change and a few minor physical alterations, the book is the same as the first edition.

INTERNATIONAL LAW AND RELATIONS

J. H. Marshall-Cornwall's *Geographic Disarmament; A Study of Regional Disarmament* (Oxford University Press, pp. xii, 207), published under the auspices of the Royal Institute of International Affairs, is a different approach to the problem of disarmament. Instead of limiting military forces by nations, Major-General Marshall-Cornwall would limit military strength in certain frontier areas. He has studied numerous attempts at neutralization—which he considers an improperly used word for the purpose—from Greek and Roman times to our own day. Two intentions were revealed in such efforts: (1) to exclude by agreement a definite area from the exercise of warfare; (2) to separate potential antagonists from direct military contact. "Failing a satisfactory solution of the twin problems of general disarmament and of collective repressive action by the League of Nations, both of which objectives still appear to be Utopian ideals, some other preventive régime is required" (p. 33). Yet the study does not reveal much hope for such efforts. "The doctrine of abstract neutrality, even when reinforced by international guarantees, has proved unsuited to the conditions of modern Europe"—this is the author's conclusion after studying Switzerland, Upper Savoy, Belgium and Luxemburg, Cracow, and Albania. A similar conclusion is reached concerning buffer states in Asia and Africa; since there is no guarantee for their existence, they are a temptation to war. His prophecy concerning Ethiopia (p. 45) has already been fulfilled. With regard to waterways (Rush-Bagot agreement—or land frontiers (Norway and Sweden), all depends upon psychology and friendly relations. The League of Nations has not been friendly to the idea, perhaps because of unwillingness to demilitarize the Rhineland, perhaps because of unwillingness to assume control; but in the only case in which the League has tried it (Aaland Islands), it has stood the test for fifteen years. The author is forced up against the same problem as elsewhere in disarmament—the guarantee which affords security. If he is correct in the statement that we shall never be able to get rid of war, then, as he says, his proposals are a means of reducing risks; and they are worthy of study. The reviewer still believes, however, that the proper approach is to attack war; for so long as there is war, so long must there be military preparation. Get rid of war and there will be no need for arms.—CLYDE EAGLETON.

The first consecutive account of the American "peace movement" is now published in Merle E. Curti's *Peace or War: The American Struggle, 1636–1936* (W. W. Norton and Co., pp. 374). Mr. Curti has been working this lode of social history for some years, and in this neatly written and compact narrative has produced a generally well-balanced analysis of a complicated ideology. An aloof and selective sympathy with the actors on his stage and much comprehension of their aspirations are manifest in his pages. The book is a thoroughly competent history of the peace workers of the United States up to the World War. The last three chapters, dealing with the period since 1914, exhibit a bias in favor of the idea that "war has been functional to the capitalistic system itself" (p. 308). In this period, the balance of values may be questioned without laying down a definition of what work for peace is or should be. The League to Enforce Peace played a bigger part and is entitled to more space than the Ford peace ship; the Bok peace prize goes unmentioned; while the ramifications of peace activity among all sorts of organizations are recorded inadequately. The account of the period since 1914 emphasizes the popular, revolutionary, and propagandist phases of the movement at the expense of its evolutionary programs. It would be interesting to know whether the publisher's distortions of this scholarly text realize their objectives. The title *Peace or War* is obviously an alibi for a history of a movement, or "crusade" if one likes, designed to deceive buyers; the excellent and valuable notes are so far suppressed that they are not attached to the text by superior figures and are assembled at the end further to conceal them from intelligent readers. If such devices sell an extra copy, the reviewer for one would be astonished.—DENYS P. MYERS.

Discussions by highly respected writers have brought general acceptance of the thesis that the origins of the Monroe Doctrine are found in all but minor degree in European politics. In *The United States and Europe, 1815–1823* (University of California Press, pp. x, 315), Edward Howland Tatum, Jr., contends that they arise primarily from American conditions and the experience of the Republic in its relations with European powers in the period 1815 to 1823. He has marshalled so convincing an array of materials that the unmodified conventional view can no longer be maintained. The volume opens with analyses of world politics following the Congress of Vienna and American foreign policy of the time. Russia was the most powerful nation on the Continent, but on the sea British power was in unquestioned ascendancy. The American attitude toward Continental affairs was characterized by aloofness. The plans of the land powers could affect her in only a secondary manner. British policy might have serious repercussions on America. Relations with Great Britain were filled with conflicts, and her actions were watched with suspicion and

alarm by both the public and the government. Apprehension was felt as to all British moves in the New World, but especially as to the policies affecting Cuba and Latin American trade. From this background the author examines the comments of the leading American journals and the writings of the leading American statesmen of the period. In sum, he concludes that the Monroe Doctrine was only in secondary degree the result of Russian moves in the Northwest and of the threats of action by the Holy Alliance in Latin America. Its announcement was not, as has been generally accepted, made substantially under the aegis of the British Foreign Office. Indeed, so far as it was directed against any individual power, it was pointed at Great Britain. It sprang from the experience of then recent years as a national pronouncement "which could serve the United States as a guide and a defense." It was a decisive declaration of political principles expressing the republican national spirit of the times.—CHESTER LLOYD JONES.

Columbia and the United States, 1765–1934 (Duke University Press, pp. 554), by E. Taylor Parks, presents, for the first time, a clear-cut study of the relations of the United States with that region which is now Columbia. After a twenty-page introduction, the author successively treats relations through 1822 and in the period of the 1820's, then, more extensively, "Antecedents of the Treaty of 1846" and "Relations" under it. The most extensive and most valuable portions of the work are, however, "The Evolution of the American Canal Policy," "The Panama Revolution and its Aftermath," and the briefer "Recent Relations." Appendices and a lengthy forty-page bibliography follow. While the present reviewer considers the book a definite and valuable contribution to the study of Hispanic-American relations, he feels that the earlier portions are in nowise as thoroughly handled as those on aspects of the Canal Question. With important exceptions, the Wars of Independence period is largely a detailed synthesis of secondary accounts. Particularly displeasing is the lack of attention given patriot privateering and its influence upon United States relations. The purpose of Commodore (not Captain) Perry's mission was to put an end to patriot privateering, not merely—as Dr. Parks states—to collect indemnity for illegal seizures. The best portion of the work is the excellently handled "Panama Revolution and Its Aftermath." It is pro-Colombian, but in no sense is it a diatribe against the United States. The bibliography is, however, a great disappointment to this reviewer. Particularly, he takes exception to the author's failure to annotate. Fully 600 titles are listed, yet no indication is given as to relative merit, nature of content, or particular biases of individual works. Without annotation or description, a bibliography becomes nothing more than a mere compilation.—LEWIS W. BEALER.

In *Germany and the Rhineland* (Royal Institute of International Affairs, London, pp. 72), the proceedings of the meetings held at Chatham House on March 18 and 25 and April 2 are set forth in print for the benefit of posterity. They present a striking picture of the muddlement and confusion of British thought or lack of thought in the face of the menace of Fascist aggression. Harold Nicolson, in the initial address on the German action of March 7, contends (correctly in the reviewer's opinion) that the Reich is under the spell of a collective neurosis and that Hitler is a mystical, half-mad, and utterly irresponsible exhibitionist. But as for British policy, he merely proposes that Downing Street convince Paris, first, that Hitler is mad and therefore must be dealt with "carefully"; second, that Britain will support France in the event of a German invasion; and third, that Britain will not fight to save Austria or Czechoslovakia or Poland from the Nazis. In the ensuing discussion, Lord Robert Cecil agrees that Hitler is "mad"; therefore, no plan or policy is possible; one must simply do what seems "best." Lord Winterton asserts that the time has come to act—how, why, or in what direction is unclear. Lord Arnold opines that Germany has been treated badly, that it is the French who have the neurosis, and that Britain should do nothing. Arnold Toynbee thinks that Britain should say "No" to Berlin, which would be about equivalent to saying "Boo!" In the proceedings of the second session, Sir Norman Angell discusses psychology and argues realistically and cogently for collective defense through sanctions in place of armed isolationism or the balance of power. He observes aptly that even though English stupidity may be a gift of God, the gift ought not to be abused. Again the various learned commentators on the address create a confused Babel of tongues. At the third session, the Marquess of Lothian argued against collective security and in favor of changes in the *status quo*, i.e., concessions to Germany. Italy is bad. Russia is unreliable. Britain must rely on her navy and decide for what (if anything) she will fight. In the discussion, confusion reigns once more. These observations by sincere and intelligent Britons make painful reading. They reveal many of the causes of the impotence, futility, and irresponsibility of British policy in Europe today. There is, in fact, no policy, but only chaos productive of ever greater chaos. Americans have no right to criticize, since they have assumed no responsibilities and run no risks for peace. But the paralysis of Britain promises irremediable tragedy for Europe, the Empire, and the world.—FREDERICK L. SCHUMAN.

An example of the not altogether happy results of trying to interpret a particular situation in terms of a general theory is furnished by Emile Burns' *Ethiopia and Italy* (International Publishers, pp. 223). Mr. Burns, who is an authority on Marxian exegesis, seeks to demonstrate that

Italy's war against Ethiopia is another manifestation of the Leninist doctrine that the great imperialist states want colonies in order, above all else, to provide their monopoly capitalists with new spheres for investment. This theory may have some validity as applied to France or England, but to say that Mussolini invaded Ethiopia to give Italian capitalists an outlet for investing their surplus capital is to misread the actual conditions prevailing in Fascist Italy. As a matter of fact, there is very little surplus capital in Italy, and what little there is has little desire to migrate into uncertain fields. Italian capital has always been known for its timidity. In any case, Mussolini's state machine has absorbed not only Italy's surplus capital but much of her working capital. Banks, insurance companies, and other financial institutions are bulging with the government's I. O. U.'s. The holders of these want the dictatorship to retrench at home rather than endanger the nation's solvency on a risky colonial adventure. If the Italian capitalist class did in fact want Mussolini to go into Ethiopia, it was because only by a victory there could he recoup the prestige lost due to the prolonged depression and to the failure of the Corporative State to alleviate it. To save their *existing* investments, to preserve the capitalist system in Italy itself—and not primarily to conquer new worlds for investment—that was why the Italian capitalists accepted the war against Ethiopia.—ROBERT G. WOOLBERT.

The Diplomatic Recognition of the Border States, Part I: Finland (University of California Press, pp. viii, 122), by Malbone W. Graham, contains materials of interest to the student of diplomatic history and of political and constitutional changes causing the creation of an independent state of Finland. Archives of Finland and unpublished memoirs of Rudolf Holati (active in the public life of the period) give the basis for an authentic account of this comparatively recent development. Most of the monograph is devoted to the campaign for recognition of independence in the three years following December, 1917. An introductory chapter presents the various legal theories which had been developed regarding the relations between Russia and Finland as a grand duchy, and shows the views taken by political groups within Finland regarding the question of independence. The texts of the instruments relating to recognition, whether recognition of independence, *de facto* government, *de jure* government, or provisional government, are of interest to students of diplomacy and of international law. The history of these documents shows how largely questions of recognition are considered by governments from the point of view of national interest. The lack of a summary of the historical analysis is doubtless attributable to the fact that this is the first part of a general study.—CHESNEY HILL.

The recently published third edition of Walter C. Langsam's *The World Since 1914* (Macmillan, pp. xvi, 888) represents a distinct improvement over the earlier editions. Although the author has adhered to the same general form of organization of his material, many of the chapters have been substantially rewritten and one entirely new chapter, on Latin America, has been added. The introduction of an increased number of excellent maps, many of them in color, should also contribute to the further success of this deservedly popular work.

POLITICAL THEORY AND MISCELLANEOUS

The new edition of Dr. W. F. Willoughby's *The Government of Modern States* (D. Appleton-Century Co., pp. xxii, 539) is a thorough revision of his original book (1918), and the new material which has been added has enlarged the first edition by about one-fourth. The method and general outline are the same as those of the earlier volume: the treatise is essentially an analysis, proceeding from the general to the particular, resolving the problem of government into its constituent elements. The author believes that "in the existing textbooks on government, political principles have not been ignored, but they have not been disentangled from descriptive matter and so presented that their full purport is apparent." Two things are aimed at, and very successfully achieved: "to set forth the problem of government as a problem, and to show how the leading states of the world have in practice met it." The new states that have arisen since the World War and the new types and concepts of government that have arisen since then are, of course, included in the discussion; but the reviewer must take exception to the author's "German conception" of the state (pp. 23–26), reiterating the attitude ascribed to Germany during the war, that "it knows no law of morality and no restraint but that of expediency." Theories of state are not coterminous with boundary lines, and to speak of a "German" theory in this connection is to fall into the error of confusing government and final authority with the state as an abstract concept. Moreover, the prevailing idea now held by a majority of German theorists is not Hegelian, as it is in Italy, but an idea which identifies the state more nearly with the people as a collective community. These few pages should be revised in the light of present concepts in the next printing, and all the more because the book in all other respects has been brought up to date and, on the whole, is one of the most penetrating, well-balanced, and succinct analyses of modern governmental systems that has appeared. It is one of the few books of its kind, written with a philosophical background—the kind of book now most needed.—KARL F. GEISER.

Such studies as Jay William Hudson's *Why Democracy?* (D. Appleton-Century Co., pp. xiv, 246) are needed in the midst of the contrary tendencies of today. Unsuccessful attempts to define political democracy as such lead the author to the conclusion that it can be adequately defined only in terms of its end or purpose, and thus as a function of the "larger" or ethical democracy. This carries him into the ethical field, where he discovers democracy as the expression and the guarantee of the rights of man. Examining these rights, he concludes that they are the "conditions necessary for the best realization of what human beings are ultimately capable of becoming." Ample proof that such conditions are "rights" he finds in the fact that they grow out of "universal, necessary, and permanent desires through which our fundamental capacities and powers struggle for realization." The right to the end, or the right to life, brings with it the right to the means, under which he includes both the right to ascertain the means (by free thought, speech, press, and assembly) and the right to share in the means (being economic, social, and cultural rights). This in turn leads to the right to guarantee the means, or to political rights, and so to political democracy. "The supreme liberty for any man is the liberty to share in the determination of his liberties." Not blind to the weaknesses of democracy, the author finds however, that "its relative inefficiency . . . is redeemed by its ethical advantages, which no other form of government can offer." He finds democracy also the inevitable ultimate form. The more modern democratic formula is elaborated through the insistence on expert responsible leadership. The case for democracy is thoroughly and convincingly presented in this book, even though the reader may find himself unable to accept all of the author's deductions or to follow the, in places, all too intricate paragraphs. In the reviewer's opinion, the ethical case for democracy could have been established without so deep an adventure into what Mr. Hudson himself, quoting Burke, refers to as the "Serbonian bog" of moral rights.—ELLEN DEBORAH ELLIS.

Educators in America will find both a challenge and a group of sensible suggestions in William F. Russell's *Liberty vs. Equality* (Macmillan Co., pp. ix, 173). For he is concerned that education become the solvent that shall be applied to the evils which liberty and equality themselves have engendered and developed. Wisely he points out that if we have liberty to the full we cannot have equality, while if we have equality to the full we cannot have liberty. Men are so constituted that they desire both. The chief possibility of compromise Dr. Russell finds in education broadly conceived to include "every agency that informs the young." He traces the growth of the aspirations and struggles for liberty and equality and

the conflicts between their respective devotees, especially on American soil. "Americans have always had to fight other Americans both for liberty and equality." In such a conflict we of the machine age are involved. The pendulum, having swung to the emphasis of liberty rather than equality, is now moving to the limitation of liberty. It was education which effected the restoration of equality; can it now effect the salvation of liberty? The second half of the book is devoted to a consideration of the interdependence of liberty and learning, the responsibility of education for curbing and remaking the motives loosed under laissez-faire to the latter's own undoing, and the opportunity opened before education by unemployment and leisure. The author then stresses the importance of equalizing educational opportunity and responsibility for research, if need be through centralized financing in state and nation, but reserving to the localities the liberty to determine "what shall be taught and how." We can have both equality and liberty. The author's closing note is a mingling of warning, escape, and hope. If the great compromise is not effected—and he recognizes it may be too late—there remains the world of thought—art, music, literature, philosophy, and science. In this world, all men are equal and all men are free. The passport to this world of the intellect is a liberal education. The issue is "What do we want?" Whatever it may be, even though it be both liberty and equality, if we want it fiercely enough "we shall get it."—RUSSELL M. STORY.

As a person who found Arthur F. Bentley's *The Process of Government* very stimulating, I must admit that I was disappointed in his *Behavior, Knowledge, Facts* (Principia Press, Bloomington, Ind., pp. xii, 391). In his earlier work, Bentley summarized the current trends in sociological theory and then proceeded with a very realistic description of "pressure" groups and government. In his most recent publication, he summarizes the current psychologies and then presents a very abstract analysis of his own. The vivid illustrations and applications of his earlier book are missing. Bentley seems to have given up his empirical approach and has gone into logic and metaphysics. In order to discuss the language-behavior of men, he invents a terminology all his own. This makes his book extremely difficult reading for a political scientist. The problem which he is attacking is certainly an important one for social science. He considers the linguistic conditioning of science and knowledge. If this former journalist could furnish an interpreter for his new terminology, the book would be more useful. Some of the terms which he uses to describe current methods in studying the "psychology of voting" are "behavioral space time," "personans," "organic reference," "operative modes," and "organic setting." A translation of this book for political scientists would be useful.—HAROLD F. GOSNELL.

In his *The Old South* (Arthur H. Clark Co., pp. 354), R. S. Cotterill presents the first synthesis of the so-called New Southern History, which has been constructed and resurrected by such scholars as Phillips, Coulter, Craven, Owsley, and others. The work of these writers, among other things, has brought about a more just appreciation of the part which the South has played in the building of the nation, but now for the first time a complete picture of this field of history, reflecting briefly and concisely the increased knowledge and the new points of view of these researches, has been produced. The author states that his purpose has been to relate in modern and comprehensive style the development of the South from earliest times to the Civll War, stressing the rôle of Southern nationalism in the growth of the South and of the nation. The volume includes an analysis of the topography of the country and its influence upon settlement; an interesting discussion of the native Indian tribes; the founding of the first Southern colonies; the growth and development of tobacco and cotton farming; the settlement of the trans-Mississippi region; the beginnings of Southern nationalism; the development of sectionalism; the Jacksonian migration; trade and transportation and their influence upon Southern nationalism; economic discontent; the Southern movement, 1848–1851; the building of the early railroads in the South; the dominance of "King Cotton"; secession; the culture of the Old South; and the struggle for independence and its effects. *The Old South* shows ample evidence of careful planning and thorough research. It is reasonably well balanced, with the possible exception of the extensive amount of space devoted to the discussion of Indian tribes, which, incidentally, is extremely interesting and well written. As a matter of fact, the entire volume is well written, and the story of the South is told most interestingly, yet in a scholarly way. Even though not all students of history may agree with every viewpoint expressed, Professor Cotterill has presented a logical, convincing, and scholarly synthesis of the ante-bellum South, and has depicted the effects of this South upon subsequent national development.—JOHN W. MANNING.

The first chapter of *Create the Wealth* (W. W. Norton and Co., pp. 314), by William Beard, discusses the nature of a technological society. Technology, says the author, is "integrating" and "purposeful." In the next chapter, the author accepts "abundance" as a national good. In succeeding chapters, he avers that the "efficiency movement" lights the way, especially when studies are made of national efficiency. The "studies show" that higher living standards are technically possible unless prevented by foreign trade. He then urges the public to combine the profit system and production for use into an experimental program for creating wealth. Production for use will be carried on by public authorities as

standards that will prevent abuses by the profit system. Every page of the book is just as naïve as this statement as to the contents of the book —a statement derived largely from the "contents" as listed by the author. Everything that conforms to the conviction of the author is quoted with approval, with but little, if any, analytical ability. Thus this sentence: "Again in the case of milk distribution coöperative societies have been able to distribute milk for 33 per cent of the selling price, whereas the Agricultural Adjustment Administration reports that private companies absorb 66 per cent of the selling price in distribution." Under such a margin, the coöperatives would long since have had all the business! But the "public system" contemplated in this book "would still rank as an idle theory," says the author, "unless legal obstacles to its general installation were surmountable." The author finds that "warrant is afforded by the federal Constitution for setting up such a public economy in the following power delegated to Congress: "to lay and collect taxes, to provide for the general welfare." Those who will read the decisions of the Supreme Court of the United States will learn that this clause does not add a "general welfare" power to the powers enumerated to the Congress. The book may add to the zeal of those to whom it appeals. It does not add to the analysis of present economic conditions.—CLYDE L. KING.

In his *Group Leadership* (W. W. Norton and Co., pp. 259), Robert D Leigh presents a splendid, thought-provoking analysis of the organization and procedure of such groups or associations as lodges, clubs, and committees. He recognizes and evaluates the traditional rules of procedure, but insists that they must be simplified and made more comprehensible by the adoption of a terminology more in accord with present-day usage. He tries to provide a procedure which will permit the most efficient attainment of the ends desired. Although rules of procedure are provided in considerable detail, they are by no means the author's only concern. Much attention is given to the solution of problems by individuals and by small and large groups. The successive stages in the process of problem-solving, whether by individuals, small groups, or large groups, are carefully described. Careful direction is provided for the one who is to plan or lead a meeting. The rules of the game, in simple language, are explained for the one who is to participate in such a meeting. No attempt is made to analyze the procedure or organization of legislatures, city councils, party conventions, or other governmental or quasi-governmental groups. In the new rules of procedure, the committee of the whole becomes "informal consideration" and the demand for the previous question is changed to a motion for "an immediate vote on the pending question." These are but samples of changes which are included. Many stu-

dents of eugenics will disagree with the statement (pp. 27–28) that the feeble-minded do not exceed one in sixteen of the population. In fact, the White House Conference of 1930 agreed that fifteen per cent of the population are feeble-minded (see *Applied Eugenics*, by Paul Popenoe and Roswell Hill Johnson, 1933, p. 129). This, at most, is but a minor criticism of an exceedingly worth-while contribution.—DANIEL B. CARROLL.

Mitchell B. Garrett's *The Estates General of 1789* (D. Appleton-Century Co., pp. viii, 268) narrates the familiar story of the development of the Estates General from a vague idea in the popular mind into an assembled body of deputies ready to confront their sovereign. It describes, consequently, the aristocratic revolt against the proposals of Calonne, which gave the king the alternatives of bankruptcy or the convocation of the Estates General; the plan to set the privileged and non-privileged orders at odds over the composition of that body; the fall of Brienne; the recall of Necker; the second Assembly of Notables; the agitation for double representation of the Third Estate and the vote by head; the memorial of the princes; and the decision of Necker to give the Third Estate double representation but to leave the question of the vote by head to the assembled deputies. In spite of the familiarity of his story, however, the author makes a distinct contribution to the literature of the subject. He shows an intimacy with the sources, a familiarity with events and personalities, a ripeness of reflection, and a gift for well-turned phrases which reveal his long years of study of the subject. He carefully and fully classifies for the first time the hundreds of pamphlets growing out of the controversies of the period. As a result, he makes the last days of the Ancien Régime more intelligible than they have ever been before.—C. P. HIGBY

A work of contemporary Italian scholarship in political science with no comment on Fascism is a notable event. The explanation is that its theme is Machiavelli and his principle of "power politics." Achille Norsa's *Il Principio della Forza nel Pensiero Politico di Niccolo Machiavelli* (Milano, Hoepli, pp. xcv, 248) is a brief essay followed by 225 pages of bibliography (2,113 items), which may indicate that this field of inquiry has occupied the author's attention for years, including his doctoral dissertation, and studies (in Italian) on "Treitschke and Machiavelli," and "The Philosophy of History in Machiavelli." The bibliography is uncritical, but valuable as referring precisely to the multitudinous works (French, German, and English to a fragmentary extent, as well as Italian) which have discussed the great Florentine and his significance to men and events of the last four hundred years. Machiavelli's rôles as diplomat, historian, commentator on the art of war, and literary artist are passed over lightly. The essay is mainly a sympathetic exposition of the famil-

iar theoretical contribution of Machiavelli, who is accepted frankly as the "founder of modern political science," or, in Gioberti's phrase, the "Galileo of Politics." The philosopher is to associate Machiavelli with Kant, Dante, and Dante's Ulysses, all at one in their sublime courage and thirst for truth; and thus his work is "assured a perpetual *giovinezza*." —HENRY R. SPENCER.

In *Lafayette Comes to America* (University of Chicago Press, pp. xl, 184), Louis Gottschalk has given some of the results of his long study of "the hero of two worlds." In thirteen chapters, he subjects to severe but sympathetic historical criticism the legend that has grown up around the personality and career of Lafayette from the time of his birth in the region of the Upper Loire until he set foot in America. The result is a penetrating and brilliant interpretation of the early life of one of the least known and most puzzling characters of modern history.—C. P. HIGBY.

DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY GRAYSON L. KIRK
University of Wisconsin

POLITICAL PHILOSOPHY AND PSYCHOLOGY

John C. Adams; A.B., Northwestern, 1932. The Italian Theory of the Corporative State. *Chicago.*

Gabriel Almond; Ph.B., Chicago, 1932. The Succession of Leaders. *Chicago.*

Sigmund S. Arm; B.S.S., College of the City of New York, 1932; A.M., Columbia, 1935. Influence of Locke and Montesquieu on the Early State Constitutions. *Columbia.*

Charles C. Barrell; A.B., Hampden-Sydney, 1931; A.M., University of Virginia, 1932. Functional Representation—Its Theoretical and Practical Problems. *Ohio State.*

Russell William Barthell; A.B., Washington, 1930; A.M., *ibid.*, 1931. Attitudes of Business toward Government. *Chicago.*

Donald G. Bishop; A.B., University of Akron, 1928; A.M., Princeton, 1929. A Suggested Psychological Approach to the Problem of Peace. *Ohio State.*

Hugh A. Bone; A.B., North Central College, 1930; A.M., Wisconsin, 1935. Political Education in the United States. *Northwestern.*

Dorothy Borg; A.M., Columbia, 1931. Outbreak of the World War; A Comparison of the Facts with the Newspaper Stories of the Outbreak of the War—1914. *Columbia.*

Thomas I. Cook; B.Sc., London School of Economics, 1928. Political Obligation in Recent American Thought. *Columbia.*

Emmett E. Dorsey; A.B., Oberlin, 1927; A.M., Columbia, 1932. A Comparative Study of Negro Leaders. *Columbia.*

Kermit Eby; A.B., Manchester, 1927. The Attitude of Japan toward Internationalism. *Chicago.*

Harold L. Elstien; A.B., Syracuse, 1934. Measurement of Attitudes toward Crime. *Chicago.*

Emery Fast; A.B., Colorado, 1927; A.M., *ibid.*, 1929. Pragmatism and the Formulation of Public Policy in the United States since 1900. *Stanford.*

Virginia Elizabeth Fox; A.B., Stanford, 1927; A.M., *ibid.*, 1928. The Origins of the Third International. *Stanford.*

Clifford E. Garwick; A.B., Ohio State, 1928; A.M., *ibid.*, 1929. Political Ideas of Thomas Jefferson. *Yale.*

Hilden Russell Gibson; A.B., Kansas, 1933. Socio-psychological Aspects of the Political Theory of Karl Marx. *Stanford.*

Abraham Glasser; A.B., Rutgers, 1933; A.M., Princeton, 1935. Political Philosophies Revealed in Commentaries and Text Books in English and American Law. *Princeton.*

[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935).

Robert Grove; A.B., Bucknell, 1931; A.M., Syracuse, 1933. Attitudes toward Franklin D. Roosevelt as Candidate and President. *Syracuse*

William J. Haggerty; A.B., Minnesota, 1930. The Teaching of Political Science. *Chicago.*

Dayton E. Heckman; A.B., Ohio State, 1931; A.M., *ibid.*, 1931. Prohibition Passes—A Study of the Tactics of Repeal. *Ohio State.*

Norman H. Hinton; A.B., University of California, Los Angeles, 1933; A.M., Columbia, 1934. The Idea of Liberty in Recent American Thought. *Columbia.*

C. Leonard Hoag; A.B., Albion, 1929; A.M., Michigan, 1930. American Opinion on the Navy, 1919–1923. *Clark.*

Robert D. Howard; A.B., Harvard, 1924; A.M., *ibid.*, 1928. Theories of Conservatism and of Constitutional Democracy in State Constitutional Conventions. *Harvard.*

Raymond D. Lawrence; A.B., Oregon, 1925; A.M., *ibid.*, 1927. Pluralistic Sovereignty. *California.*

Mousheng Lin; A.B., Fukien University, 1926; A.M., Oberlin, 1932. The Political Theory of Anti-Stateism. *Chicago.*

Norton E. Long; A.B., Harvard, 1932; A.M., *ibid.*, 1933. Aristotle's Theory of Abstraction and Social Science. *Harvard.*

John William McMurphey; A.B., Kansas, 1921; A.M., Ontario College, 1928; B.Ph.Ed., University of Toronto, 1935. The Political Life of the Honorable Richard John Seddon, P.C. *Iowa.*

George E. McReynolds; A.B., Indiana, 1931; A.M., *ibid.*, 1932. American Sentiment Regarding Japan, 1924–1934. *Clark.*

Milton R. Merrill; B.S., Utah State College, 1925; A.M., Columbia, 1932. The Public Career of Reed Smoot. *Columbia.*

Edwin Mims, Jr.; A.B., Yale, 1921; A.M., *ibid.*, 1922. Jacksonian Democracy and Its Broader Theoretical Implications. *Harvard.*

John E. Nordskog; A.B., Drake University; A.M., Columbia; Graduate Studies at London School of Economics and Political Science. Democracy as an Ideology. *Southern California.*

Marbury B. Ogle; A.B., Ohio State, 1931; A.M., *ibid.*, 1932. Mussolini's Political Theory. *Ohio State.*

George S. Pettee; S.B., Harvard, 1926; A.M., *ibid.*, 1931. Political Revolution: Organization of Revolutionary Parties. *Harvard.*

Pearl Robertson; Ph.B., Chicago, 1923; M.A., *ibid.*, 1925. Grover Cleveland as a Political Leader. *Chicago.*

Leo C. Rosten; Ph.B., Chicago, 1930. The Washington Newspaper Corps and the Formation of Public Opinion. *Chicago.*

Mitchel Saadi; A.B., Stanford, 1932. An Analysis of the Technique of Political Propaganda. *Stanford.*

Charles P. Schleicher; A.B., College of the Pacific, 1928; A.M., Hawaii, 1931. The Contemporary American Peace Movement. *Stanford.*

James H. Sheldon; A.B., Marietta, 1927; A.M., Harvard, 1928. Factors Involved in Determining Public Attitudes toward International Policies. *Harvard.*

Mulford Q. Sibley; A.B., Central State Teachers College, Edmonds, Okla., 1933; A.M., Oklahoma, 1934. The Political Thought of Cardinal Newman. *Minnesota.*

Tarini Prasad Sinha; A.M., Michigan, 1934. The Political Techniques of Gandhi. *Chicago.*

Bruce Lannes Smith; Ph.B , Chicago, 1933. A Socio-Political Study of the American Social Scientists. *Chicago.*

August O. Spain; A.B , Texas, 1929; A.M., *ibid.*, 1931. The Political Theory of John C. Calhoun. *Yale.*

Earl N. Stilson; A.B., Harvard, 1932. The Development of Nationalism in France. *Harvard.*

Clarence H. Yarrow; A.B., Cornell, 1931. The Philosophical Origins of Italian Fascism. *Yale.*

Juan C. Zamora; Dr. of Public Law, Havana University, 1917; Dr. of Civil Law, *ibid.*, 1924. Economic Interpretation of Politics. *Columbia.*

GOVERNMENT AND POLITICS OF THE UNITED STATES AND ITS DEPENDENCIES

Pedro F. Abelarde; A.B., California, 1925; A.M., *ibid.*, 1930. Tariff Policy of the United States in the Philippines as it Affects the Sugar Industry. *Columbia.*

Wesley Adams; A.B., Northwestern, 1935; A.M., *ibid.*, 1936. Some Phases of American Neutrality Legislation. *Northwestern.*

Orville B. Alexander; B.Ed., Southern Illinois State Teachers College, 1931; A.M., Iowa, 1934. The Policy of the United States in Allowing Its Citizens to Export Munitions of War. *Iowa.*

Chester Biesen; B.S., College of Puget Sound, 1925. American Foreign Policy under the Hoover Administration. *Washington* (Seattle).

Hillman M. Bishop; A.B., Columbia, 1926. Rhode Island and the Federal Constitution. *Columbia.*

Eleanor Bontecou; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

Philip I. Booth; A.B., Arizona, 1930. Criminal Syndicalism Legislation in the United States. *Chicago.*

Richard G. Browne; A.B., Illinois, 1922; A.M., *ibid.*, 1928. National Party Platforms and their Significance. *Northwestern.*

G. W. Burkholder; A.B., Penn. State, 1925; A.M., *ibid.*, 1926; LL.B., Duquesne, 1931. Virginia's Contribution to the Formation of the Federal Constitution. *Columbia.*

George T. Davis; A.B., Clark, 1922; A.M., *ibid.*, 1922. The Idea of American Naval Parity. *Yale.*

George R. Dulebohn; A.M., Gettysburg College, 1921; A.M., *ibid.*, 1923; A.M., Pennsylvania, 1930. The Foreign Policies of Grover Cleveland. *Pennsylvania.*

Donald M. DuShane; A.B., Wabash, 1927; A.M., Columbia, 1930. American Naval Policy. *Columbia.*

Jesse Epstein; A.B., Washington, 1931. Federal Anti-Radical Legislation. *Washington* (Seattle).

Carl N. Everstine; A.B., University of Maryland, 1930. Significant Factors in Third Party Movements. *Johns Hopkins.*

John H. Ferguson; A.B., Nebraska Central College, 1929; A.M., Pennsylvania, 1932. American Diplomacy and the Boer War. *Pennsylvania.*

Thomas C. Geary; A.B., Columbia College (Dubuque), 1933; A.M., Iowa, 1934. The Presidential Campaign and Election of 1904. *Iowa.*

Arvil E. Harris; A.B., Marshall, 1926; A.M., Pennsylvania, 1928. The Campaign Activities of Organized Labor, 1906–1932. *Iowa.*

V. Don Hudson; B.S.Ed., Kirksville State Teachers College, 1927; A.M., Missouri, 1931. The Legislative History of Philippine Independence. *Iowa.*

William Isaacs; B.S. in S.S., College of the City of New York, 1925; A.M., Columbia University, 1932; J.D., New York University, 1928; J.S.D., New York Uni-

versity, 1929. Contemporary Marxian Political Movements in America. *New York University.*

E. M. Kilpatrick; A.B., Illinois, 1932; A.M., *ibid.*, 1933. Government Regulation of Advertising. *Yale.*

Howard Kline; A.B., Toledo, 1931; A.M., Syracuse, 1933. The Technique of Congressional Investigations. *Syracuse.*

Robert P. Lane; A.B., Michigan, 1913; A.M., *ibid.*, 1915. American Naval Armament Building, 1884–1898. *Chicago.*

Da Pen Liang; A.B., Fuh-tan University, 1930; A.M., Michigan, 1932. The Development of Philippine Political Parties. *New York University.*

Nolan Fortenberry; A.B., Mississippi, 1931; A.M., Mississippi, 1931. Statutory Regulation of Political Party Organization in the United States. *Illinois.*

John H. Marion; A.B., Princeton, 1931. The Training Function in the Military Services in the United States. *Chicago.*

Edwin M. Martin; A.B., Northwestern, 1929. Influence of Organized Economic Groups on Federal Tax and Tariff Legislation from 1921 to 1933. *Northwestern.*

Floyd E. McCaffree; A.B., Michigan, 1927; A.M., *ibid.*, 1928. The Nomination and Confirmation of Justices of the Supreme Court of the United States. *Michigan.*

Mary F. McGuiness; A.B., Vassar, 1910; A.M., Columbia, 1932. Legislative Record of Senator George W. Norris. *Columbia.*

Frances G. McLaughry; Ph.B., Chicago, 1932. Congressional Attitudes toward International Arbitration. *Chicago.*

Roland E. Miller; A.B., Washington, 1931; A.M., *ibid.*, 1933. Party Responsibility in Foreign Relations in the United States. *Washington* (St. Louis).

Walden Moore; A.B., Harvard, 1922. The Big Navy Movement in Congress, 1893–1913. *Columbia.*

Alice M. Morrissey; A.B., Rochester, 1929; A.M., *ibid.*, 1931. Some Legal and Economic Aspects of American Neutrality, 1914–1918. *Radcliffe.*

Wallace J. Parks; A.B., Williams, 1932. The Government and Price-Fixing. *Johns Hopkins.*

James Alfred Perkins; A.B., Swarthmore, 1934. Congressional Investigations. *Princeton.*

W. D. Polk; A.B., Vanderbilt, 1933; A.M., *ibid.*, 1934. International Obligations Contracted by the United States without Reference to the Senate. *New York University.*

Generoso Pacificar Provido; A.B., California, 1930; A.M., *ibid.*, 1931. Japanese Activities in the Philippines. *Stanford.*

Daniel S. Rosenberg; A.B., Washington, 1933; A.M., *ibid.*, 1934. The Labor Policy of the National Government of the United States. *Washington* (St. Louis).

Margaret J. Schmidt; Ph.B., Chicago, 1932. Kansas and the Republican Party. *Chicago.*

Robert B. Schwenger; A.B., Wisconsin, 1928. The Development of American-Hawaiian Relations. *Chicago.*

Dorothy A. Shields; A.B., Goucher, 1931; A.M., Pittsburgh, 1933. Third Party Recognition. *Pittsburgh.*

Libia Harold Studley; B.S., College of the City of New York, 1921; LL.B., Fordham, 1925; A.M., Columbia, 1929. Progress of Aviation Legislation in the United States. *Columbia.*

Irene Till; A.B., Syracuse, 1928; A.M., Radcliffe. The Politics of the Milk Industry. *Columbia.*

Melicio Toledo; A.B., Washington, 1931; M.Ed., *ibid.*, 1934. The Genesis of the Philippine Constitution. *Washington* (Seattle).

Albert C. F. Westphal; A.B., Columbia, 1929. The House of Representatives and American Foreign Policy. *Columbia.*

Paul Maxwell Zeis; A.B., University of Akron, 1933; A.M., Princeton, 1935. Recent American Merchant Marine Policy. *Princeton.*

CONSTITUTIONAL AND ADMINISTRATIVE LAW IN THE UNITED STATES

Willard B. Cowles; A.B., Columbia, 1928. Aspects of the Constitutionality of Treaties. *Columbia.*

Harry Lee Cummings; A.B., Arkansas State Teachers College, 1927; A.M., Iowa, 1930. The Constitutional Doctrines of Mr. Justice Brandeis. *Iowa.*

William L. Grossman; A.B., Harvard, 1927; A.M., 1928; LL.B., 1932. The Property Clause of the Federal Constitution. *Columbia.*

Harold F. Hartman; A.B., Notre Dame, 1930; A.M., Cornell, 1931. The Constitutional Doctrines of Edward Douglass White. *Cornell.*

Willard H. Humbert; A.B., Bridgewater College, 1924; A.M., Virginia, 1927. The Pardoning Power of the President. *Johns Hopkins.*

Joseph Kise; A.B., St. Olaf, 1916; A.M., Harvard, 1928. The Constitutional Doctrines of Harlan F. Stone. *Harvard.*

Lynford Lardner; B.S., Northwestern, 1932. The Position of Foreign States before American Courts. *Northwestern.*

Joseph T. Law; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations on the Delegation of Legislative Power. *Wisconsin.*

Aaron Lewittes; B.S.S., College of the City of New York, 1932; LL.B., Columbia, 1935. Judicial Review of the Problem of an Independent Administrative System. *Columbia.*

Vera McLaren; A.B., Southern California, 1924; A.M., Northwestern, 1929. The Doctrine of Public Interest. *Northwestern.*

Harold William Metz; A.B., Cornell, 1930; A.M., *ibid.*, 1931. The Nature of Federal Judicial Power. *Cornell.*

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